UNITED STATES CUSTOMS COURT REPORTS

VOLUME 73

CASES ADJUDGED IN THE
UNITED STATES CUSTOMS COURT

July–December 1974

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HJ6624
A35
1974
v.73

UNITED STATES CUSTOMS COURT

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DECISIONS OF THE UNITED STATES CUSTOMS COURT

Customs

(C.D. 4550)

YOSHIDA INTERNATIONAL, INC. *v.* UNITED STATES

Validity of surcharge—Presidential Proclamation 4074

Court No. 72-2-00314

Port of New York

[Judgment for plaintiff.]

(Decided July 8, 1974)

Barnes, Richardson & Colburn (*Schwartz & Lidstrom* and *Glad, Tuttle & White*, associate counsel; *J. Bradley Colburn, Earl R. Lidstrom, Rufus E. Jarman, Jr.* and *David O. Elliott* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Andrew P. Vance and Frederick L. Ikenson*, trial attorneys), for the defendant.

Before BOE, Chief Judge, MALETZ and RE, Judges.[1]

BOE, Chief Judge: The plaintiff has filed a motion for summary judgment challenging the validity of Presidential Proclamation 4074 promulgated August 15, 1971, which imposed a surcharge in the form of a supplemental duty in the amount of 10 percent ad valorem upon most articles imported into the United States from and after August 16, 1971. The merchandise involved herein—consisting of zippers—was imported from Japan and entered at the port of New York on August 17, 25 and 26, 1971. In addition to being assessed with duty at the rate of 23.5 percent ad valorem pursuant to item 745.72, Tariff Schedules of the United States, the merchandise in question was assessed with an additional duty of 10 percent ad valorem pursuant to item 948.00

[1] The three-judge panel in this case was designated by the chief judge upon application of the parties pursuant to section 108 of the Customs Courts Act of 1970 (28 U.S.C. 255) and rule 4.13 of this court.

which was added to the tariff schedules by Presidential Proclamation 4074.

The defendant has filed a cross-motion for summary judgment contending that Presidential Proclamation 4074 was lawfully authorized by (1) the "termination" authority delegated to the President by the Congress in section 350(a)(6) of the Tariff Act of 1930, as amended (19 U.S.C. 1351(a)(6)) and section 255(b) of the Trade Expansion Act of 1962 (19 U.S.C. 1885(b)); and (2) the authority vested in the President by section 5(b) of the Trading with the Enemy Act, as amended (50 U.S.C. App. 5(b)).

Presidential Proclamation 4074 provides in relevant part (F.R. Doc. 71-12120):

> WHEREAS, there has been a prolonged decline in the international monetary reserves of the United States, and our trade and international competitive position is seriously threatened and, as a result, our continued ability to assure our security could be impaired;
>
> WHEREAS, the balance of payments position of the United States requires the imposition of a surcharge on dutiable imports;
>
> WHEREAS, pursuant to the authority vested in him by the Constitution and the statutes, including, but not limited to, the Tariff Act of 1930, as amended (hereinafter referred to as "the Tariff Act"), and the Trade Expansion Act of 1962 (hereinafter referred to as "the TEA"), the President entered into, and proclaimed tariff rates under, trade agreements with foreign countries;
>
> WHEREAS, under the Tariff Act, the TEA, and other provisions of law, the President may, at any time, modify or terminate, in whole or in part, any proclamation made under his authority;
>
> NOW, THEREFORE, I, RICHARD NIXON, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes, including, but not limited to, the Tariff Act, and the TEA, respectively, do proclaim as follows:
>
> A. I hereby declare a national emergency during which I call upon the public and private sector to make the efforts necessary to strengthen the international economic position of the United States.
>
> B. (1) I hereby terminate in part for such period as may be necessary and modify prior Presidential Proclamations which carry out trade agreements insofar as such proclamations are inconsistent with, or proclaim duties different from, those made effective pursuant to the terms of this Proclamation.
>
> (2) Such proclamations are suspended only insofar as is required to assess a surcharge in the form of a supplemental duty amounting to 10 percent ad valorem. Such supplemental duty shall be imposed on all dutiable articles imported into the customs territory of the United States from outside thereof, which are entered, or withdrawn from warehouse, for consumption after

12:01 a.m., August 16, 1971, provided, however, that if the imposition of an additional duty of 10 percent ad valorem would cause the total duty or charge payable to exceed the total duty or charge payable at the rate prescribed in column 2 of the Tariff Schedules of the United States, then the column 2 rate shall apply.

C. To implement section B of this Proclamation, the following new subpart shall be inserted after subpart B of part 2 of the Appendix to the Tariff Schedules of the United States:

SUBPART C — TEMPORARY MODIFICATIONS FOR BALANCE OF PAYMENTS PURPOSES

Subpart C headnotes:

1. This subpart contains modifications of the provisions of the tariff schedules proclaimed by the President in Proclamation 4074.

2. Additional duties imposed—The duties provided for in this subpart are cumulative duties which apply in addition to the duties otherwise imposed on the articles involved. The provisions for these duties are effective with respect to articles entered on and after 12:01 a.m., August 16, 1971, and shall continue in effect until modified or terminated by the President or by the Secretary of the Treasury (hereinafter referred to as the Secretary) in accordance with headnote 4 of this subpart.

3. Limitation on additional duties—The additional 10 percent rate of duty specified in rate of duty column numbered 1 of item 948.00 shall in no event exceed that rate which, when added to the column numbered 1 rate imposed on the imported article under the appropriate item in schedules 1 through 7 of these schedules, would result in an aggregated rate in excess of the rate provided for such article in rate of duty column numbered 2.

4. For the purposes of this subpart—

(a) Delegation of authority to Secretary—The Secretary may from time to time take action to reduce, eliminate or reimpose the rate of additional duty herein or to establish exemption therefrom, either generally or with respect to an article which he may specify either generally or as the product of a particular country, if he determines that such action is consistent with safeguarding the balance of payments position of the United States.

* * * * * * *

(c) Authority to prescribe rules and regulations—The Secretary is authorized to prescribe such rules and regulations as he determines to be necessary or appropriate to carry out the provisions of this subpart.

5. Articles exempt from the additional duties—In accordance with determinations made by the Secretary in accordance with headnote 4(a), the following described articles are exempt from the provisions of this subpart:

* * * * *

Item	Article	Rates of duty	
		1	2
948.00	Articles, except as exempted under headnote 5 of this subpart, which are not free of duty under these schedules and which are the subject of tariff concessions granted by the United States in trade agreements-----	10% ad val------- (See headnote 3 of this subpart.)	No change.

D. This Proclamation shall be effective 12:01 a.m., August 16, 1971.

* * * * * * *

I

The courts on frequent occasions have considered the question relating to the right of the legislative branch of government to delegate the powers vested in it by the Constitution to the executive branch. It would be only time-consuming to review these many decisions at length. Suffice it to say that the Congress cannot divest itself of the legislative powers with which it has been constitutionally invested. See e.g. *Field* v. *Clark*, 143 U.S. 649 (1892); *Hampton & Co.* v. *United States*, 276 U.S. 394 (1928). As stated in *Field* v. *Clark*, *supra*, p. 692, this principle is

> * * * universally recognized as vital to the integrity and maintenance of the system of government ordained by the Constitution. * * *

Again, the Supreme Court in *Schechter Corp.* v. *United States*, 295 U.S. 495 (1935), reiterated this principle in stating that the Congress cannot delegate its legislative authority to others to exercise the unfettered discretion to make whatever laws may be thought to be needed or advisable for the rehabilitation and expansion of trade or industry.

As domestic problems and international relations have become more complex throughout the course of the history of our country, it concurrently has been recognized that our three branches of government are coordinated parts of one government, and that these partners in purpose and objective must utilize, as needed, the assistance and

efforts of the others in carrying forth the powers, duties, and responsibilities with which they have been initially invested. Thus, the legislative branch has delegated to the executive branch the powers, *inter alia*, to determine fair and just rates in interstate commerce, to proclaim an embargo on the sale of arms and munitions to foreign nations, to change rates of duties under prescribed procedures. *Field* v. *Clark*, *supra; United States* v. *Curtiss-Wright Corp.*, 299 U.S. 304 (1936); *Interstate Commerce Commission* v. *Goodrich Transit Co.*, 224 U.S. 194 (1912); *Panama Refining Co.* v. *Ryan*, 293 U.S. 388 (1935).

No inflexible standard can be applied in ascertaining the degree of assistance that one branch of government might give to another. As pointed out in *Hampton & Co.* v. *United States*, *supra*, p. 406:

> * * * In determining what it may do in seeking assistance from another branch, the extent and character of that assistance must be fixed according to common sense and the inherent necessities of the governmental co-ordination.

Although in its early history Congress itself established tariff rates through legislative enactment, the passing of time has seen the delegation of much of this authority to the President, subject, however, to prescribed standards and guidelines enunciating an "intelligible principle" to which conformance is required. *Hampton & Co.* v. *United States*, *supra*, p. 409. In *Norwegian Nitrogen Co.* v. *United States*, 228 U.S. 294, 318 (1933), the Court recognized the foregoing stating:

> * * * Neither the action of Congress in fixing a new tariff nor that of the President in exercising his delegated power is subject to impeachment if the prescribed forms of legislation have been regularly observed.* * *

The Tariff Act of 1930, as amended, and the Trade Expansion Act of 1962 were enacted by the Congress in full appreciation of the inability of the legislative branch to singly supervise or administer that comprehensive power vested in it by article I, section 8 of the Constitution which provides that:

> The Congress shall have power to lay and collect taxes, duties, imposts and excises * * *.

Congress has delegated by these Acts broad and general authority to the President to enter into negotiations with foreign nations to the end that bilateral trade agreements might be effected by the contracting parties. As a corollary power, the President has been further authorized to proclaim such modifications with respect to existing duties or other import restrictions as may be required to carry out the provisions of any particular negotiated trade agreement. Inasmuch

as a trade agreement is not self-executing the provisions or modifications contained therein must be proclaimed by the President in order that they have the effect of domestic law.

Thus, section 350 of the Tariff Act of 1930, as amended (19 U.S.C. 1351), provides in part:

> (a) (1) For the purpose of expanding foreign markets for the products of the United States (as a means of assisting in establishing and maintaining a better relationship among various branches of American agriculture, industry, mining, and commerce) by regulating the admission of foreign goods into the United States in accordance with the characteristics and needs of various branches of American production so that foreign markets will be made available to those branches of American production which require and are capable of developing such outlets by affording corresponding market opportunities for foreign products in the United States, the President, whenever he finds as a fact that any existing duties or other import restrictions of the United States or any foreign country are unduly burdening and restricting the foreign trade of the United States and that the purpose above declared will be promoted by the means hereinafter specified, is authorized from time to time—
>
> (A) To enter into foreign trade agreements with foreign governments or instrumentalities thereof: *Provided*, That the enactment of the Trade Agreements Extension Act of 1955 shall not be construed to determine or indicate the approval or disapproval by the Congress of the executive agreement known as the General Agreement on Tariffs and Trade.
>
> (B) To proclaim such modifications of existing duties and other import restrictions, or such additional import restrictions, or such continuance, and for such minimum periods, of existing customs or excise treatment of any article covered by foreign trade agreements, as are required or appropriate to carry out any foreign trade agreement that the President has entered into hereunder.

Similar provisions were again included by the Congress in the enactment of the Trade Expansion Act of 1962 (19 U.S.C. 1801 *et seq.*). Section 201 of that Act (19 U.S.C. 1821) provides:

> (a) Whenever the President determines that any existing duties or other import restrictions of any foreign country or the United States are unduly burdening and restricting the foreign trade of the United States and that any of the purposes stated in section 1801 of this title will be promoted thereby, the President may—
>
> (1) after June 30, 1962, and before July 1, 1967, enter into trade agreements with foreign countries or instrumentalities thereof; and
>
> (2) proclaim such modification or continuance of any existing duty or other import restriction, such continuance of existing duty-free or excise treatment, or such additional im-

> port restrictions, as he determines to be required or appropriate to carry out any such trade agreement.

In the same manner as the President has been authorized and given discretion to enter into bilateral trade agreements and to implement them by proclamation, he likewise has been given authority to terminate trade agreements previously negotiated.[2]

Under the so-called escape clause, section 351 of the Trade Expansion Act of 1962 (19 U.S.C. 1981), the President may increase duties on articles causing or threatening injury to the United States, after an affirmative finding by the Tariff Commission and compliance with other procedures. Under section 252 of the Trade Expansion Act of 1962 (19 U.S.C. 1882), the President may increase duties or suspend trade agreement concessions to retaliate against unjustifiable import restrictions, nontariff barriers, etc., upon compliance with stated procedures related to public hearings and the presentation of recommendations concerning foreign import restrictions. Under the so-called flexible tariff provision, section 336 of the Tariff Act of 1930, as amended (19 U.S.C. 1336), the President may, after appropriate finding by the Tariff Commission, proclaim increased duties to equalize differences in cost of production. These statutes, in short, authorize the President to increase duties in certain situations that are not here applicable, provided that specific procedures are followed.

Finally, the President has been delegated authority to "terminate, in whole or in part," prior proclamations which have implemented the provisions of foreign trade agreements. And it is this power, defendant contends, which authorized the President to impose the additional 10 percent duty here in issue.

In this connection, it is to be noted that section (B)(1) of Presidential Proclamation 4074 provides:

> I hereby terminate in part for such period as may be necessary and modify prior Presidential Proclamations which carry out trade agreements insofar as such proclamations are inconsistent with, or proclaim duties different from, those made effective pursuant to the terms of this Proclamation.

---

[2] Section 2(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1352(b)) provides:

> (b) Every foreign trade agreement concluded pursuant to this part shall be subject to termination, upon due notice to the foreign government concerned, at the end of not more than three years from the date on which the agreement comes into force, and, if not then terminated, shall be subject to termination thereafter upon not more than six months' notice.

Section 255(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1885(a)) similarly provides:

> (a) Every trade agreement entered into under this subchapter shall be subject to termination or withdrawal, upon due notice, at the end of a period specified in the agreement. Such period shall be not more than 3 years from the date on which the agreement becomes effective. If the agreement is not terminated or withdrawn from at the end of the period so specified, it shall be subject to termination or withdrawal thereafter upon not more than 6 months' notice.

There can be no doubt that this phraseology, viewed in its customary and ordinary usage, is intended as the exercise of the power of termination.

The statutes are brief and concise in delineating this prerogative. Section 350(a)(6) of the Tariff Act of 1930, as amended (19 U.S.C. 1351(a)(6)) provides:

> The President may at any time terminate, in whole or in part, any proclamation made pursuant to this section.

Similarly, section 255(b) of the Trade Expansion Act of 1962 (19 U.S.C. 1885(b)) provides:

> The President may at any time terminate, in whole or in part, any proclamation made under this subchapter.

Against this background, the question is whether the President, in the assessment of the supplemental duty provided for in Presidential Proclamation 4074, acted beyond the authority so delegated to him by the Congress.

Viewing this Proclamation in the light of the statutory authority delegated by the Congress, it would appear that it is hybrid in character. Although an effort is made to "terminate" and "suspend" prior proclamations in the same breath, presumably in the hope that some justifying authority might be thereby synthesized, there can be little doubt that the basic authority and justification for the President's action therein was predicated on the termination powers conferred by section 350(a)(6) of the Tariff Act and section 255(b) of the Trade Expansion Act.[3]

We conclude that the authority granted by statute to "terminate, in whole or in part, any proclamation" does not include the power to determine and fix unilaterally a rate of duty which has not been previously legally established. On the contrary, the "termination" authority, as statutorily granted, merely provides the President with a mechanical procedure of supplanting or replacing existing rates with rates which have been established by prior proclamations or by statute. Relevant thereto is *United States* v. *American Bitumuls & Asphalt Co.*, 44 CCPA 199, C.A.D. 661, 246 F.2d 270 (1957), *cert. denied*, 355 U.S. 883 (1957). In that case, the collector of customs, pursuant to Presidential Proclamation 2901, assessed a duty of ½ cent a gallon on imported petroleum products, which proclamation the importer claimed to be invalid in that it increased the rate of duty in excess of the amount of 50 percent as provided by section 350(a)(2) of the

[3] Thus, the General Counsel of the Treasury in his opinion with respect to the legal basis for the imposition of the surcharge predicated the action of the President in making this assessment on the termination authority. Op. General Counsel (Treas. Dept.) No. 822, Sept. 21, 1971.

Tariff Act of 1930, as amended (19 U.S.C. 1351(a)(2)). In determining such a 50 percent increase limitation not to be applicable to proclamations terminating other proclamations, our appellate court stated (44 CCPA, p. 205, 246 F.2d, p. 275):

> There is a logical reason for placing a limitation on the tariff changes which may be effected by proclamations giving effect or carrying-out trade agreements but not on those which merely terminate other proclamations, since the latter can do no more than restore rates which have already been legally established, and are thus inherently limited. [Emphasis in original.] [4]

General headnote 4(d) of the tariff schedules codifies this principle and provides clear legislative direction with respect to the effect resulting from the termination of a proclamation:

> [W]henever a proclaimed rate is terminated or suspended, the rate shall revert, unless otherwise provided, to the next intervening proclaimed rate previously superseded but not terminated or, if none, to the statutory rate.

This headnote is clarified by the following statement in the *Tariff Classification Study Submitting Report* (Nov. 15, 1960), p. 17:

> Headnote 4 relates to the effect, in each of the two numbered rate columns of the tariff schedules, of changes in rates of duty by legislative enactment and by proclamation of the President pursuant to delegated authority under the trade-agreements legislation and section 336 of the Tariff Act of 1930 (the so-called flexible-tariff provision). This headnote explicitly expresses the difference in legal effect between statutory (amended) rates of duty and proclaimed (modified) rates of duty. A permanent statutory amendment of a rate of duty supersedes and terminates the existing rate, whereas a proclaimed (modified) rate supersedes but does not terminate the existing rate of duty. For example, if an original statutory rate of 30 percent ad valorem applicable to an article is "modified" to 40 percent by proclamation issued pursuant to section 336 and thereafter is modified to 20 percent by proclamation under the trade-agreements legislation, the original rate of 30 percent was superseded but not terminated by the 40-percent rate and the 40-percent rate was superseded but not terminated by the 20-percent rate. The "modified" rate of 40 percent proclaimed pursuant to section 336 would be reflected in both rate columns, whereas the "modified" rate of 20 percent proclaimed pursuant to section 350 would be reflected only in column numbered 1. On the other hand, if the Congress should enact permanent legislation changing the 20-percent rate to 15 percent, such amendment would terminate and supersede the previous rates of duty in both rate columns unless otherwise specified in the amending statute.

[4] See also *United States* v. *Metropolitan Petroleum Corp.*, 42 CCPA 38, C.A.D. 567 (1954); *Barclay & Company, Inc.* v. *United States*, 47 CCPA 133, C.A.D. 745 (1960).

General headnote 4(d) treats with the situation where a proclaimed rate is terminated or suspended. If in the example previously given, the 20-percent rate proclaimed pursuant to the trade-agreements authority were terminated or suspended, the new rate would become 40 percent since this is the next intervening proclaimed rate previously superseded but not terminated. If the 40-percent rate should thereafter be terminated or suspended the rate would revert to the statutory rate of 30 percent. [Emphasis added.]

Defendant contends, however, that the phrase in general headnote 4(d) "unless otherwise provided" indicates recognition of a discretionary authority to establish a new intermediate rate in conjunction with the statutory authority to "terminate * * * in part." We cannot agree.

In our view that phrase is nothing more than an exception to the provision contained in headnote 4(d) fixing the order of rate reversion resulting from a termination proclamation. More specifically, the phrase "unless otherwise provided" gives the President discretionary authority when terminating a proclamation to specify a rate established in a specific previous proclamation other than the next intervening proclamation and thus avoid an automatic reversion to the next intervening proclaimed rate. In other words, the phrase "unless otherwise provided" contemplates only the exercise of Presidential discretion to preclude the order of reversion set forth in general headnote 4(d).

This court likewise is unable to accept the further argument propounded by the defendant—that the maxim of statutory construction providing that a broader authority includes the lesser—is applicable to the case at bar. In reference thereto, the defendant suggests that if the President has the power to terminate all prior proclamations, thus bringing into effect the statutory rate, *a fortiori*, he has the power to impose a new rate, higher than the terminated rate, yet lower than the statutory rate. Such a conclusion is fallacious. The power granted to the President with respect to the adjustment of rates pursuant to his termination authority is limited to the use of termination proclamations (1) to increase rates to the highest level, *i.e.*, the statutory rate, or (2) to raise or lower rates to conform to rates which have been established by a prior proclamation. In either of these instances, the rates, to which conformance may be sought, have been previously established either by the Congress (statutory rate) or by a bilateral negotiation embodied in a trade agreement pursuant to statutory authority. In short, the power to fix a new and independent rate requires a greater grant of power than that delegated to the President by the termination authority. Pursuant to the latter authority, the President is constrained, with the exception noted above,

to follow a fixed order of reversion established by the Congress, "resting" only on those rates previously established. Indeed, should the establishment of new and independent rates be considered a lesser power included in the termination authority, all concession rates previously established through bilateral negotiation could be totally ignored thereby giving the President complete and broad discretion to impose any rate whatsoever up to the statutory rate. We fail to find wherein the statutes evidence an intention on the part of the Congress to grant the President such unrestrained unilateral authority.

Nor can we accept the construction urged by the defendant that the phrase "terminate * * * in part" as distinguished from "terminate in whole" authorizes the establishment of new intermediate rates. It is manifest that the phrase "terminate * * * in part" can be given no other meaning than that which the individual words signify. Thus, the word "terminate" signifies "the act of ending something, implying a final and conclusive act, a complete cessation of effect * * *." *Falcon Sales Company* v. *United States*, 47 Cust. Ct. 129, 135, C.D. 2292, 199 F. Supp. 97, 102 (1961). Its meaning is not interchangeable with the word "suspend" which "signifies the act of stopping for a time, implying a temporary inoperative condition." *Ibid.* In light of these considerations, no rationalization will permit an implication to be derived from the phrase "terminate * * * in part" that existing proclaimed rates can be suspended and temporarily supplanted by new rates determined solely by the President. The discretionary authority contained in the provision "terminate, in whole or in part" is twofold: (1) to nullify and bring to an end an entire proclamation; and (2) to specify the extent to which a prior proclamation is terminated, thereby permitting a portion thereof to remain in effect.[5]

The legislative history likewise indicates that the authority delegated to the President "to terminate, in whole or in part, any proclamation" was not intended by the Congress to grant him the power to determine and fix unilaterally an intermediate rate of duty which had not been previously legally established. It is to be noted in this connection that the Administration's draft bill for the Trade Expansion Act of 1962—H.R. 9900—contained a proposed section 244(b) to give the President the authority to establish such new intermediate rates as an incident to the power to terminate in part. See *Hearings before the House Committee on Ways and Means on H.R. 9900—Trade Expansion Act of 1962* (87th Cong., 2d Sess., 1962, p. 17) here-

[5] See Presidential Proclamation 3762, 81 Stat. 1076 (1967), by the terms of which Presidential Proclamation 3455 was terminated in whole and Presidential Proclamation 3458 was terminated to the extent that it modified Presidential Proclamation 3455.

after referred to as "House Hearings"). The proposed section 244(b) provided (House Hearings, p. 17):

> (b) The President may at any time terminate, in whole or in part, any proclamation issued under this title. Termination in part of a proclamation reducing a rate of duty may include the proclamation, as required or appropriate to carry out any trade agreement under this title or any predecessor Act, of a rate of duty higher than such reduced rate but not higher than the rate which would have been applicable if the proclamation had been terminated in whole.

An accompanying section-by-section analysis of H.R. 9900 prepared by the executive branch contains the following statement with respect to proposed section 244(b) (House Hearings, p. 37):

> The first sentence of subsection (b) is substantially identical to section 350(a)(6) of the Tariff Act of 1930, as amended, and provides that the President may at any time terminate, in whole or in part, any proclamation issued under title II. The second sentence is a new technical provision which permits the President, when terminating in part a proclamation reducing a rate of duty, to establish a new rate of duty at any point in the range above the reduced rate but no higher than the rate which would have been applicable if the proclamation had been terminated in whole. Such authority would be of use in negotiations under article XXVIII of the General Agreement on Tariffs and Trade (hereinafter referred to as GATT) where it is occasionally desirable to agree to make increases in rates of duty.

In addition, a memorandum prepared by the Tariff Commission for the Ways and Means Committee comments on proposed section 244(b), as follows (House Hearings, pp. 951–2):

> 3. Termination of Proclamations.—Section 244(b) of the bill provides that the President may at any time terminate, in whole or in part, any proclamation issued under Title II of the bill; i.e., proclamations prescribing continuance, reduction, or elimination of duties or other import restrictions, or continuance of existing duty-free or excise treatment, required or appropriate to carry out a trade agreement negotiated under the proposed authority, and proclamations prescribing treatment to "adjust" imports to protect the national security. This section further provides that termination in part of a proclamation reducing a rate of duty may include—
>
> > the proclamation, as required or appropriate to carry out any trade agreement under this title [i.e., Title II of the bill] or any predecessor Act, of a rate of duty higher than such reduced rate but not higher than the rate which would have been applicable if the proclamation had been terminated in whole.
>
> The provision regarding partial termination of a proclamation issued under title II raises several questions. This authority

> to proclaim an intermediate rate of duty seems to be clearly related only to the new grant of authority in title II of the bill.[1] Inasmuch as title II does not contain authority to negotiate increases in rates of duty, it is not clear how a basis could be laid in a trade agreement entered into under title II for the proclamation of the aforementioned higher intermediate rate of duty.

[1] The continuation of the existing proclaiming authority in section 350 is provided for separately in section 248(a)(1) of the bill. It will be noted that section 248(a)(1) does not include a provision with respect to proclaiming intermediate rates of duty. Furthermore, section 248(a)(1) expressly continues the authority contained in the present section 350(a)(6) to terminate, in whole or in part, any proclamation of trade agreements entered into pursuant to section 350, a fact which further militates in favor of reading section 244(b) of the proposed legislation as relating only to proclamations issued to carry out trade agreements entered into under the proposed legislation.

From the foregoing, it seems clear that it was the executive branch's intent in proposing section 244(b) to give the President authority—which he did not previously have—to establish new intermediate rates as an incident to the power to terminate in part. It is significant, however, that the second sentence of proposed section 244(b) was eliminated when the Ways and Means Committee reported H.R. 11970 as a clean bill which the Congress subsequently enacted. The fact that Congress considered granting the President new authority to establish new, intermediate rates as an incident to the power to terminate in part, and rejected it, indicated that Congress concluded that the President should not have power to choose rates which never existed in prior statutes or proclamations.

Additionally, it is to be observed that the Senate adopted an amendment to H.R. 11970, the Trade Expansion bill, which would have added a new section 353, as follows (108 Cong. Rec. 19875 (1962)):

> Notwithstanding any other provision of law, the President may, when he finds it in the national interest, proclaim with respect to any article imported into the United States—
>
> (1) the increase of any existing duty on such article to such rate as he finds necessary,
>
> (2) the imposition of a duty on such article (if it is not otherwise subject to duty) at such rate as he finds necessary, and
>
> (3) the imposition of such other import restrictions as he finds necessary.

It is obvious that had this provision been enacted into law, it would have authorized a surcharge such as provided for in Presidential Proclamation 4074. However, the provision was deleted by the House-Senate Conference Committee. Conference Report No. 2518 (87th Cong., 2d Sess. (1962) (2 U.S. Code Cong. & Adm. News (1962), p. 3142)). Deletion of the provision not only demonstrates that Congress was unwilling to grant such expansive discretionary power to the President, but also indicates a probable recognition by Congress

that such an unrestrained grant of authority to increase existing duties and impose nonexisting duties may well have been an invalid delegation of legislative power vested solely in the Congress by the Constitution.[6]

Nor can this court agree with defendant's contention that prior Presidential proclamations serve as a precedent for the President's alleged authority to establish intermediate rates. Presidential Proclamation 2901, 64 Stat. A427 (1950), cited by the defendant, provided for a reduction during the period of one year in the quantity of potatoes subject to the reduced tariff quota in the General Agreement on Tariffs and Trade (GATT). By reducing the quantity of potatoes subject to the quota rate, the Presidential Proclamation did nothing more than expose the possibility of more imported potatoes to the higher statutory rate. Unlike the effort to establish new supplemental intermediate rates as proposed by Presidential Proclamation 4074, Presidential Proclamation 2901 changed neither the concession rate nor the statutory rate. No intermediate nor supplemental duty was established whatsoever.

Defendant cites Presidential Proclamation 2929, 65 Stat. c12 (1951), in further support of its assertion that the President has established new intermediate rates in his exercise of the "termination" authority. Examination of the history with respect thereto discloses that the Torquay Protocol, a new trade agreement between participating nations, provided for an increase on certain gloves from the 25 percent duty (the previous rate established by the GATT (T.D. 51802, schedule XX, pp. 162–3)) to a rate of 35 percent (T.D. 52739, p. 212). Presidential Proclamation 2929, in proclaiming the new trade agreement rates, specifically excepted in part I certain items and provided in part III that all prior proclamations "are hereby terminated to the extent" that the items therein specified are modified by the Torquay Protocol. See 65 Stat. c17–c18.

In the opinion of this court, Presidential Proclamation 2929 clearly was predicated on the authority to proclaim trade agreement rates as provided by section 350(a)(1)(B) of the Tariff Act of 1930, as amended (19 U.S.C. 1351(a)(1)(B)). This conclusion is confirmed by the decision of the appellate court in *United States* v. *Aris Gloves, Inc.*, 48 CCPA 126, C.A.D. 777 (1961). In determining therein that public notice of intention to negotiate the trade agreement (Torquay

[6] Senator Byrd, Chairman of the Senate Finance Committee, reviewing in the Senate the actions of the conferees with respect to H.R. 11970, indicated that several factors led to the rejection of section 353 in conference (108 Cong. Rec. 22182 (1962)):

> * * * Section 353 was a sword which could cut two ways: First, one problem was that there was no procedure prescribed for ascertaining the facts and, second, *the other problem was that the Congress did not retain the same opportunity for review as the other sections of the bill provide.* [Emphasis added.]

Protocol) rates relating to gloves had been properly given, as required by statute, the court must necessarily have recognized that the new rate was a modification agreed upon as a part of the Torquay Protocol and given domestic effect by the proclamation of the new trade agreement rates. Since a statutory requirement of notice is not required in a unilateral act of termination, a decision of the appellate court, would have been needless had the new rates in question been established under the termination authority. Hence, while Presidential Proclamation 2929 was used as the vehicle by which prior rates relating to certain gloves were "terminated in part," the exercise of the termination authority was merely ancillary to the primary purpose and effect of the proclamation—which was to give domestic legal effect to the new rates established by the Torquay Protocol and thus cause these new rates to apply to those gloves, the prior rates of which had been terminated in part.

Accordingly, it is the opinion of this court that Presidential Proclamation 4074 cannot be sustained by the termination authority and that the Proclamation, in fact, arrogated unto the President a power beyond the scope of any authority delegated to him by the Congress. The assessment of the surcharge constituted an affirmative unilateral act on the part of the Executive which cannot be viewed nor rationalized in any way other than an unauthorized imposition of a new and additional duty. Indeed, to invest the President with the powers contended by the defendant would render the proceedings and guidelines enumerated in other tariff legislation meaningless. See *United States* v. *Schmidt Pritchard & Co.*, 47 CCPA 152, C.A.D. 750 (1960), *cert. denied*, 364 U.S. 919 (1960).

II

With respect to defendant's contention that the Trading with the Enemy Act (50 U.S.C. App.) serves as further authority for the validity of Presidential Proclamation 4074, the plaintiff submits that no consideration should be given thereto inasmuch as the Proclamation does not specifically refer to this Act as a part of its statutory authority.

To sustain the plaintiff's contention would be to place an unwarranted limitation upon judicial review. Presidential Proclamation 4074 does not seek to designate the Tariff Act of 1930, as amended, and the Trade Expansion Act of 1962 as the sole sources of authority. On the contrary, the Proclamation refers to the President as "acting under the authority vested in me by the Constitution and the statutes, including, but not limited to, the Tariff Act, and the TEA [Trade Expansion Act] * * *." This court, accordingly, has considered the argument presented by the defendant with respect to the authority that may

have been delegated to the President by the provisions of the Trading with the Enemy Act. *Toledo, P. & W. R. R.* v. *Stover*, 60 F. Supp. 587 (S.D. Ill. 1945).

It has been long recognized that war, itself, effects a suspension of commercial intercourse between belligerent nations. However, changes in economic conditions as well as changes in the evolving philisophy of man have dictated that legislative modifications be enacted in lieu of the inflexible rule of law terminating all commercial intercourse between warring nations existing at common law and in the law of nations. In so doing, controls have been provided through legislative enactment with respect to authorized foreign trade and intercourse which prior thereto would have been prohibited.

The present Trading with the Enemy Act may be said to have its roots in the Act of Congress of July 13, 1861, 12 Stat. 255, 257.[7] Pursuant thereto the President through the Secretary of the Treasury, was authorized in his discretion to "license and permit commercial intercourse" with all or any part of the States in insurrection.

The system of licensing, thus first authorized during the Civil War, again became an integral part of the Trading with the Enemy Act of 1917. The provisions thereof prohibited any trade with the enemy "except with the license of the President." 40 Stat. 412, section 3(a).

It will be noted that in each of the foregoing legislative enactments the words "license" and "permit" were used to describe the form of regulation delegated to the President. From the congressional committee hearings,[8] reports [9] and debates on the Trading with the Enemy Act of 1917,[10] as well as from the statement voiced by the Secretary of the Treasury,[11] it appeared, however, that the statutory provisions

[7] Section 5 of the 1861 Act provided:

> [A]ll commercial intercourse by and between the same and the citizens thereof and the citizens of the rest of the United States shall cease and be unlawful so long as such condition of hostility shall continue; and all goods and chattels, wares and merchandise, coming from said State or section into the other parts of the United States, and all proceeding to such State or section, by land or water, shall, together with the vessel or vehicle conveying the same, or conveying persons to or from such State or section, be forfeited to the United States: *Provided, however,* That the President may, in his discretion, license and permit commercial intercourse with any such part of said State or section, the inhabitants of which are so declared in a state of insurrection, in such articles, and for such time, and by such persons, as he, in his discretion, may think most conducive to the public interest; and such intercourse, so far as by him licensed, shall be conducted and carried on only in pursuance of rules and regulations prescribed by the Secretary of the Treasury.

[8] Hearings on H.R. 4704, House Comm. on Interstate and Foreign Commerce, 65th Cong., 1st Sess., May 29, 31 and June 4, 1917; Hearings on H.R. 4960, Senate Subcomm. of Comm. on Commerce, 65th Cong., 1st Sess., July 23, 24, 25, 27, 30 and August 2, 1917.

[9] H. Rep. No. 85, 65th Cong., 1st Sess., June 21, 1917; S. Rep. No. 111, 65th Cong., 1st Sess., August 23, 1917; H. Rep. No. 155, 65th Cong., 1st Sess., September 21, 1917.

[10] 55 Cong. Rec., 65th Cong., 1st Sess., pp. 4840–4879, 4907–4930, 4968–4989, 6949–6958, 7007–7025 (1917).

[11] Letter from Secretary William G. McAdoo to Senator Ransdell, dated September 11, 1917, 55 Cong. Rec., 65th Cong., 1st Sess., p. 7013. See also comments of Senators Reed and Ransdell, 55 Cong. Rec., pp. 7012–7014.

afore referred to did not provide sufficient authority to the President to adequately control imports—a power considered essential during a time of war. Therefore, the Congress, in enacting the Trading with the Enemy Act of 1917, added section 11 which gave broad and expansive powers to the President to control imports during World War I. 40 Stat. 422, section 11.[12]

The significance of the afore-quoted section, insofar as it relates to the immediate question presented to us for determination, is found in the fact that the extremely broad power given to the President thereunder to regulate imports terminated at the end of World War I and was never reenacted in subsequent amendments.[13]

In 1933 during the domestic crisis occasioned by the depression of that decade, the President's authority to act under section 5(b) was extended to "any other period of national emergency declared" by him, and he was given the power "by means of licenses or otherwise" to regulate "transfers of credit between or payments by banking institutions." 48 Stat. 1.

In 1941 the Act was amended in order to give the President more flexibility over alien property, 55 Stat. 839. Again, the mode of regulation authorized by the statute included a system of licenses.

In support of its contention the defendant places specific reliance on section 5(b) of the present Trading with the Enemy Act (50 U.S.C. App. 5(b)) providing:

> (b) (1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—
>
> (A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and
>
> (B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power,

[12] Section 11, above referred to, provided:

> Whenever during the present war the President shall find that the public safety so requires and shall make proclamation thereof it shall be unlawful to import into the United States from any country named in such proclamation any article or articles mentioned in such proclamation except at such time or times, and under such regulations or orders, and subject to such limitations and exceptions as the President shall prescribe, until otherwise ordered by the President or by Congress: *Provided, however,* That no preference shall be given to the ports of one State over those of another.

[13] The license powers accorded to the President terminated at the close of World War I and became effective again automatically at the outbreak of World War II. On the other hand, section 11 and the broad powers included therein, were of a temporary nature and were terminated at the close of World War I. See *Markham* v. *Cabell,* 326 U.S. 404 (1945).

> or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,
>
> * * * * * * *

Recognizing that a declaration of a national emergency is within the discretion of the President and that a determination as to the need or desirability of affirmatively exercising such authority is not a judicial function, this court will refrain from offering any gratuitous comment as to the existence or nonexistence of the national emergency declared in Presidential Proclamation 4074. *Sardino* v. *Federal Reserve Bank of New York*, 361 F. 2d 106 (2d Cir. 1966); *Werner* v. *United States*, 119 F. Supp. 894 (S.D. Cal. 1954), *aff'd*, 233 F. 2d 52 (9th Cir. 1956).

The plaintiff urges that the regulatory powers conferred upon the President by the Trading with the Enemy Act are directed against and applicable only to enemy countries and against property having an "enemy taint." Such a construction with respect to the purview of this Act is too restrictive. The statute relates to "* * * any property in which any foreign country or a national thereof has any interest, * * *." The usage of the word "any" negates such a limited construction. The successive amendments to the Act likewise indicate the intent of the Congress to expand its scope rather than to narrow its application. *United States* v. *Broverman*, 180 F. Supp. 631 (S.D.N.Y 1959).

The gravamen of the defendant's contention appears to rest on the construction of the words contained in section 5(b)(1)(B), "* * * regulate * * * importation * * * of * * * any property in which any foreign country or a national thereof has any interest, * * *." Pointing with particularity to this statutory language, the defendant further contends that Congress has, in effect, delegated to the President the regulatory power inherent in and originating from its constitutional authority to regulate foreign commerce. Citing *McGoldrick* v. *Gulf Oil Corp.*, 309 U.S. 414 (1940) as authority, the defendant argues that it necessarily follows that the imposition of the surcharge in the form of a supplemental duty is thus within the authority delegated to the President by section 5(b)(1)(B). We do not agree that the *McGoldrick* case or the decisions referred to therein justify the application of this reasoning to the case at bar.

In acknowledging the principle that the laying of duties on imports, although an exercise of the taxing power, is also an exercise of the power to regulate foreign commerce, Mr. Justice Stone in the *McGoldrick* case cites *Gibbons* v. *Ogden*, 22 U.S. (9 Wheat.) 1, 88 (1824); *Hampton & Co.* v. *United States*, 276 U.S. 394 (1928) and *Board of Trustees* v. *United States*, 289 U.S. 48 (1933). Each of these decisions

affords us an incisive insight with respect to the relationship existing between the powers to tax and lay duties on imports and the power to regulate foreign commerce as conferred upon the Congress by the Constitution.

In the case of *Gibbons* v. *Ogden*, *supra*, Mr. Chief Justice Marshall stated:

> We must first determine whether the act of laying "duties or imposts on imports or exports," is considered, in the constitution, as a branch of the taxing power, or of the power to regulate commerce. We think it very clear, that it is considered as a branch of the taxing power. It is so treated in the first clause of the 8th section: "Congress shall have power to lay and collect taxes, duties, imposts and excises;" and before commerce is mentioned, the rule by which the exercise of this power must be governed, is declared. It is, that all duties, imposts and excises shall be uniform. In a separate clause of the enumeration, the power to regulate commerce is given, as being entirely distinct from the right to levy taxes and imposts, and as being a new power, not before conferred. The constitution, then, considers these powers as substantive, and distinct from each other; and so places them in the enumeration it contains. The power of imposing duties on imports is classed with the power to levy taxes, and that seems to be its natural place. * * *

Again, in *Hampton & Co.* v. *United States*, the Supreme Court, in rejecting the contention that the sole constitutional purpose in providing the Congress with the power to impose customs duties was to raise revenue, stated (*supra*, pp. 412–413):

> So long as the motive of Congress and the effect of its legislative action are to secure revenue for the benefit of the general government, the existence of other motives in the selection of the subjects of taxes cannot invalidate Congressional action. As we said in the *Child Labor Tax Case*, 259 U.S. 20, 38: "Taxes are occasionally imposed in the discretion of the legislature on proper subjects with the primary motive of obtaining revenue from them, and with the incidental motive of discouraging them by making their continuance onerous. They do not lose their character as taxes because of the incidental motive." And so here, the fact that Congress declares that one of its motives in fixing the rates of duty is so to fix them that they shall encourage the industries of this country in the competition with producers in other countries in the sale of goods in this country, cannot invalidate a revenue act so framed. * * *

Similarly, we find a further reiteration of the constitutional principle first enunciated in the case of *Gibbons* v. *Ogden*, *supra*, in the case of *Board of Trustees* v. *United States*, wherein the Supreme Court stated, *supra*, p. 58:

> It is true that the taxing power is a distinct power; that it is distinct from the power to regulate commerce. *Gibbons* v. *Ogden*,

> *supra*, p. 201. It is also true that the taxing power embraces the power to lay duties. Art. I, § 8, par. 1. But because the taxing power is a distinct power and embraces the power to lay duties, it does not follow that duties may not be imposed in the exercise of the power to regulate commerce. The contrary is well established. *Gibbons* v. *Ogden*, *supra*, p. 202. * * *

From the foregoing decisions, it is well established that the constitutional grants of power to lay and collect taxes and duties on imports and the power to regulate foreign commerce are separate and independent grants of authority distinct from each other. Although the primary purpose of the power to tax and impose duties may be to obtain revenue, it may also serve as a regulatory measure.

Similarly, the imposition of a duty on imports may constitute, *inter alia*, an exercise of the constitutional power to regulate foreign commerce. In connection with this latter power, however, it must be borne in mind that the extent and mode of any regulatory authority delegated by the Congress must be determined in each individual instance by the statutory language and an examination of all the surrounding circumstances. It cannot be said that the investiture of a power to "regulate" necessarily includes, *per se*, the power to levy duties. The necessity of determining the scope and extent of any delegated regulatory power has been recognized by the Supreme Court in *Hamilton* v. *Dillin*, 88 U.S. (21 Wall.) 73 (1875), wherein it was stated (p. 92):

> [I]t is conceded that in many cases the power to make rules and regulations on a particular subject is a limited power, having respect to mode and form, and time and circumstances, and not to substance. But it must also be conceded that in other cases the power is much more extensive and substantial.* * *

The decisions in the cases of *Gibbons* v. *Ogden; Hampton & Co.* v. *United States; Board of Trustees* v. *United States* and *McGoldrick* v. *Gulf Oil Corp.*, *supra*, relate to the imposition of duties by the Congress as an exercise of its plenary constitutional powers to lay and collect taxes and duties and to regulate foreign commerce. The significance of the *McGoldrick* decision rests in its determination that a state regulation (tax) on imports, which previously had been the object of congressional regulatory attention, cannot infringe on the constitutional power vested in the Congress to regulate commerce. These issues, however, are not involved herein. The sole question before us in the case at bar concerns the extent to which the Congress has delegated the power of "regulation" to the Executive.

In determining whether section 5(b) of the Trading with the Enemy Act serves as authority for the imposition of an additional duty, we must accord the word "regulate" the sense in which the Con-

gress intended it to be used. The meaning of a statute or of the words therein is not to be derived from any single section, but from all of the parts comprising the entirety and, in turn, from their relationship to the ultimate purpose sought to be attained. Nor can the Act be read intelligibly if the eye is closed to the purpose and objectives evidenced in complementary statutes or in the known temper of legislative intent or historical usage. For legislation delegating restrictive regulatory authority cannot operate, merely upon the declaration of an emergency, to the exclusion of other legislative acts providing procedures prescribed by the Congress for the accomplishment of the very purpose sought to be attained by Presidential Proclamation 4074. *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579 (1952).

The words "instructions, licenses, or otherwise" contained in section 5(b)(1) define the nature and mode of the regulatory authority intended to be delegated to the President. These words conform to the phraseology used throughout the history of the Act in the establishment of a system of licenses and permits for the control of property during a time of war and crisis and which have come to be recognized as the hallmark and distinguishing feature of the Act. These words likewise serve to evidence a recognition on the part of the Congress that such delineating and restrictive phraseology, in fact, was employed in order to preclude the all-encompassing construction now urged by the defendant. If the words "regulate * * * importation" were given the construction contended by the defendant, the President by the declaration of a national emergency could determine and fix rates of duty at will, without regard to statutory rates prescribed by the Congress and without the benefit of standards or guidelines which must accompany any valid delegation of a constitutional power by the Congress. *Hampton & Co.* v. *United States*, *supra*, p. 409. The delegation of such an unrestrained and unbridled authority to lay duties, indeed, might well be deemed an abdication by the Congress of its constitutional power to regulate foreign commerce.

In the case of *Panama Refining Co.* v. *Ryan*, 293 U.S. 388 (1935), the Supreme Court, speaking through Mr. Chief Justice Hughes reaffirmed the principle that the Congress cannot abdicate its legislative powers, vested by the Constitution. In holding that section 9(c) of title I of the National Industrial Recovery Act of June 16, 1933 (15 U.S.C., title I, § 709(c)), which authorized the President to prohibit the transportation of petroleum in interstate commerce, constituted an unconstitutional delegation of legislative power, the Court stated:

> [I]t gives to the President an unlimited authority to determine the policy and to lay down the prohibition, or not to lay it down, as he may see fit. * * * [*Id.*, p. 415.]

Again, in referring to article I, section 1 of the Constitution, providing that all legislative powers therein granted shall be vested in the Congress, and to article I, section 8, paragraph 18, providing that the Congress is empowered to make all laws necessary and proper for the execution of its invested powers, the Court, in the *Panama Refining Co.* case, further stated (*supra*, p. 421):

> * * * The Congress manifestly is not permitted to abdicate, or to transfer to others, the essential legislative functions with which it is thus vested. Undoubtedly legislation must often be adapted to complex conditions involving a host of details with which the national legislature cannot deal directly. The Constitution has never been regarded as denying to the Congress the necessary resources of flexibility and practicality, which will enable it to perform its function in laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the legislature is to apply. Without capacity to give authorizations of that sort we should have the anomaly of a legislative power which in many circumstances calling for its exertion would be but a futility. But the constant recognition of the necessity and validity of such provisions, and the wide range of administrative authority which has been developed by means of them, cannot be allowed to obscure the limitations of the authority to delegate, if our constitutional system is to be maintained.

The Court added (*Id.*, p. 430):

> If § 9(c) were held valid, it would be idle to pretend that anything would be left of limitations upon the power of the Congress to delegate its law-making function. The reasoning of the many decisions we have reviewed would be made vacuous and their distinctions nugatory. Instead of performing its law-making function, the Congress could at will and as to such subjects as it chose transfer that function to the President or other officer or to an administrative body. The question is not of the intrinsic importance of the particular statute before us, but of the constitutional processes of legislation which are an essential part of our system of government.

It is both the function and duty of the courts to hold the exercise of delegated congressional powers within the confines prescribed by the Congress. It is likewise well settled that a statute subject to two interpretations, should be construed so as to preserve its constitutionality. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1, 30 (1937).

Accordingly, we take the position that section 5(b)(1) of the Trading with the Enemy Act conveys to the President an authority consisting only of a specific mode of regulation, as distinguished from the full and all-inclusive power to regulate foreign commerce. The dele-

gation of the specific regulatory authority, "by means of instructions, licenses, or otherwise," manifestly is restrictive in scope and is but one branch of many attached to the trunk of the tree in which is lodged the all-inclusive substantive power to regulate foreign commerce, vested solely in the Congress.

We, therefore, conclude that section 5(b)(1) of the Act contains such restrictive standards and guidelines as to meet the test of constitutionality, but which, in turn, precludes the President from laying the supplemental duties provided by Presidential Proclamation 4074.

In support of its position, the defendant has placed reliance on the case of *South Puerto Rico Sugar Co. Trading Corp.* v. *United States*, 167 Ct. Cl. 236, 334 F.2d 622 (1964), *cert. denied*, 379 U.S. 964 (1965). The question therein determined by the Court of Claims involved the validity of an "entry fee" charged to the plaintiff as a precondition to the importation of sugar into the United States from the Dominican Republic. The "entry fee" was imposed by the President through the Secretary of Agriculture pursuant to the specific authority provided by the Act of Congress of July 6, 1960, 74 Stat. 330. By the provisions of that Act, the President was authorized to reduce the quota of sugar imported from Cuba and, after so doing, permit the deficit caused by such a quota reduction to be imported and marketed in the United States, "* * * at such times and from such sources, * * * subject to such terms and conditions as he deems appropriate under the prevailing circumstances * * *."

In the detailed discussion of the foreign affairs existing at the time of the enactment of the congressional Act and the imposition of the "entry fee," the court in its majority opinion stressed with particularity the politically sensitive hemispheric conditions and events—the Castro Government in Cuba; the attempt on the life of the President of Venezuela concerning which the Trujillo Government in the Dominican Republic was alleged to be connected; the collective action taken by the Organization of American States (OAS) against the Dominican Republic in severing diplomatic relations and in the partial interruption of economic relations; the increase in the quantity of Dominican Republic sugar which automatically would be allowed to be exported to the United States by virtue of the reduction of the Cuban quota, a large percentage of which was owned by and operated for the benefit of General Trujillo and his family.

Recognizing the foregoing as matters having great import on the political as well as the economic stability of many nations in the Western Hemisphere, the court gave great weight to the resulting responsibility falling upon the President in the administration of foreign affairs. Relating his singular discretion and authority in this

area to the language contained in the Sugar Act, as amended on July 6, 1960, the court stated (334 F. 2d, p. 632):

> Exercising his discretion in the light of the needs of United States foreign policy, the President (through his delegates) could lawfully deem it an "appropriate" "condition" of importation, "under the prevailing circumstances," to require a fee on "replacement" sugar from the Dominican Republic which would deprive the Trujillo regime of the special premium of the United States price (over the world price). * * *

It would appear clear that the majority opinion of the court in essence construed the "entry fee" not as a duty, but as a license exacted by the President, as a "condition," in the course of implementing this country's foreign policy and, thus, within the purpose and purview of the authority granted to the President by the specific statutory language of the Sugar Act, as amended.

The entry fee under consideration in the *South Puerto Rico Sugar* case was imposed as a sanction against the Dominican Republic. It was not imposed as a duty. We fail to find wherein a proper analogy can be drawn between the executive regulation imposing the "entry fee" directed against the Dominican Republic under the authority of the Sugar Act of 1960, and Presidential Proclamation 4074 imposing the 10 percent surcharge in the form of a "supplemental duty" uniformally on most articles imported into the United States.

The case of *Hamilton* v. *Dillin*, 88 U.S. (21 Wall.) 73 (1875) serves to well illustrate the distinction between the delegation to the Executive by the Congress of an authority to "regulate" pursuant to its constitutional powers to lay and collect taxes and duties and to regulate foreign commerce, as distinguished from authority to regulate pursuant to the war power of government.

The question therein presented related to an Act of Congress enacted during the Civil War authorizing the President to prohibit all commercial intercourse between the Confederacy and the Union and "in his discretion, license and permit commercial intercourse" with any part of such States pursuant to rules and regulations prescribed by the Secretary of the Treasury.[14] The Court in upholding a charge of a license fee of four cents per pound imposed by the Secretary of the Treasury on the importation of cotton from States in insurrection stated (pp. 93–94):

> * * * When, in March, 1863, the President issued his license to trade in cotton and other articles in the insurrectionary districts, under and subject to the conditions contained in the regulations adopted by the Secretary of the Treasury, his action was not

[14] 12 Stat. 255, 257 is quoted in part in footnote 7, *supra*.

> inconsistent with or repugnant to the internal revenue law passed the year before. It had nothing to do with that law or the subject-matter of it. The conditions exacted by him were not imposed in the exercise of the taxing power, but of the war power of the government. The exaction itself was not properly a tax, but a bonus required as a condition precedent for engaging in the trade. * * *

From the foregoing decision, it will be noted that the license fee in question was neither deemed a tax nor was its application deemed to have resulted from a delegation of the constitutional power of the Congress to regulate foreign commerce. As the Court stated, it was a "bonus required as a condition precedent for engaging in the trade." The specific delegation of authority and the resulting imposition of the license fee was in the exercise of the war power of government.

This court is not without appreciation of the burdensome problems encountered by the Executive as he represents these United States in the society of nations. Nor can the court fail to recognize the efforts of the President to achieve stability in the international trade position and monetary reserves of this country. But neither need nor national emergency will justify the exercise of a power by the Executive not inherent in his office nor delegated by the Congress. Expedience cannot justify the means by which a deserving and beneficial national result is accomplished. To indulge in judicial rationalization in order to sanction the exercise of a power where no power in fact exists is to strike the deadliest of blows to our Constitution.

The power to levy and collect taxes, duties, imposts and excises and to regulate foreign commerce has been vested solely in the Congress by the Constitution.

"The question whether such a delegation of legislative power is permitted by the Constitution is not answered by the argument that it should be assumed that the President has acted, and will act, for what he believes to be the public good. The point is not one of motives but of constitutional authority, for which the best of motives is not a substitute." *Panama Refining Co.* v. *Ryan*, *supra*, p. 420.

Notwithstanding the broad and expansive authority delegated by various congressional enactments to the Executive in the administration of our international trade relations and affairs, we are of the opinion that Presidential Proclamation 4074 in its attempt to unilaterally assess a surcharge in the form of a supplemental duty in the amount of 10 percent on imports entering this country, exceeded the authority delegated to the President and is, therefore, invalid.

The motion of the plaintiff for summary judgment is granted and the cross-motion of the defendant is denied.

Let judgment be entered accordingly.

570-865—75——3

MALETZ, Judge, concurring.

I am in accord with the well-reasoned opinion of Chief Judge Boe. Withal, I believe it may be helpful to add some further comments with respect to the defendant's contention that when a national emergency is declared by the President—as was done in Proclamation 4074—he has unlimited discretion to impose supplemental duties on imports by virtue of the authority delegated to him by section 5(b) of the Trading with the Enemy Act, as amended (50 U.S.C. App. (5)(b)). To the extent pertinent, that section provides:

> (b)(1) During the time of war or *during any other period of national emergency declared by the President, the President may*, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, *by means of instructions, licenses, or otherwise*—
>
> (A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and
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> (B) investigate, *regulate*, direct and compel, nullify, void, *prevent or prohibit*, any acquisition holding, withholding, use, transfer, withdrawal, transportation, *importation* or exportation *of*, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, *any property in which any foreign country or a national thereof has any interest*,
>
> by any person, or with respect to any property, subject to the jurisdiction of the United States; * * *; and *the President may, in the manner hereinabove provided, take other and further measures not inconsistent herewith for the enforcement of this subdivision.* [Emphasis added.]

* * * * * * *

At the outset, it is fundamental that the court's primary task, in determining whether section 5(b) authorizes the President to impose supplemental duties on imports, is to ascertain the Congressional intent and to construe the section in such a way as to give effect to that intent. This, in turn, requires the provision in issue to be reviewed, not as an isolated, discrete enactment, but in the context of the entire statute of which it is a part. *United States* v. *California Portland Cement Company*, 413 F.2d 161, 166 (9th Cir. 1969); *Stanford* v. *Commissioner of Internal Revenue*, 297 F.2d 298, 308 (9th Cir. 1961); *Sun Theatre Corp.* v. *RKO Radio Pictures, Inc.*, 213 F.2d 284, 290 (7th Cir. 1954).

The Trading with the Enemy Act of 1917 (40 Stat. 411 et seq.) came into being as a consequence of the common law doctrine of both

England and the United States that during a state of war all commercial intercourse between citizens of belligerent states or countries is prohibited unless specifically authorized by the sovereign.[1] Its declared purpose was "to mitigate the rules of law which prohibit all intercourse between the citizens of warring nations, and to permit, under careful safeguards and restrictions, certain kinds of business to be carried on." [2] This was accomplished by prohibiting and making unlawful all forms of trading with the enemy "except with the license of the President." 40 Stat. 412, sec. 3(a).

The concept of legalizing trade with the enemy pursuant to license was carried over from the Civil War when legislation was enacted providing for a system of licenses and permits for trading with the inhabitants of the insurrectionary States. Thus, section 5 of the Act of July 13, 1861 (12 Stat. 255, 257) authorized the President to declare the inhabitants of a State or part of a State to be in a state of insurrection; and provided that "thereupon all commercial intercourse" by and between the citizens of those areas and the rest of the United States "shall cease and be unlawful so long as such condition of hostility shall continue," and that all articles coming from or proceeding to such areas shall be forfeited to the United States, together with the vehicle or vessel conveying them, provided, however—

> [t]hat the President may, in his discretion, license and permit commercial intercourse with any such part of said State or section, the inhabitants of which are so declared in a state of insurrection, in such articles, and for such time, and by such persons, as he, in his discretion, may think most conducive to the public interest; and such intercourse, so far as by him licensed, shall be conducted and carried on only in pursuance of rules and regulations prescribed by the Secretary of the Treasury. * * *

Pursuant to this Act, President Lincoln licensed and permitted trading between the citizens of the Union and the inhabitants of the insurrectionary States which was carried on under rules and regulations issued by the Secretary of the Treasury.[3] What is particularly

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[1] See e.g., *The Julia*, 12 U.S. (8 Cranch) 181, 193 (1814); *The Rapid*, 12 U.S. (8 Cranch) 155, 161 (1814); *Hanger* v. *Abbott*, 73 U.S. (6 Wall.) 532, 535 (1868); *Coppell* v. *Hall*, 74 U.S. (7 Wall.) 542, 554 (1869); *United States* v. *Lane*, 75 U.S. (8 Wall.) 185, 195 (1869); *Insurance Co.* v. *Davis*, 95 U.S. 425, 429 (1877).

[2] S. Rep. No. 111, 65th Cong., 1st Sess. (1917), p. 1. See also *Ex Parte Kumezo Kawato*, 317 U.S. 69, 76 (1942).

[3] On August 16, 1861, the President issued a Proclamation (12 Stat. 1262) declaring that the inhabitants of certain States, with some exceptions, were in a state of insurrection; that all commercial intercourse with them was unlawful; and that all goods coming in from those States "without the special license and permission of the President, through the Secretary of the Treasury" would be forfeited to the United States. On February 28, 1862, the President issued an executive order licensing and permitting such commercial intercourse between the inhabitants of the areas declared to be in insurrection and the citizens of the States of the Union "within the rules and regulations which have been or

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significant is that the licensing authority delegated to the President and Secretary of the Treasury under the 1861 Act and as carried out in the executive orders, proclamations and regulations issued pursuant thereto, was never construed or even considered as including the power to impose taxes or duties.[4]

In sum, as explained by Charles Warren, Assistant Attorney General and author of the measure, the Trading with the Enemy Act of 1917—like the Act of July 13, 1861—"recognizes that there may be some kinds of business transactions or commerical intercourse between citizens of this country and enemies which may be carried on or performed with safety to the United States, and it provides for those transactions by means of a system of license."[5] Mr. Warren also observed that "[t]he provisions of * * * [the] bill greatly amplify

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may be prescribed by the Secretary of the Treasury for the conducting and carrying on of the same on the inland waters and ways of the United States." See *Hamilton* v. *Dillin*, 88 U.S. (21 Wall.) 73, 76 (1875). This was subsequently revised by the "License of Trade" issued by the President on March 31, 1863, permitting commercial intercourse with inhabitants of the insurrectionary States pursuant to regulations adopted on that same date by the Secretary of the Treasury and subsequently modified on September 11, 1863. *Id.* at 77, 78. The following year, the licensing of commercial intercourse by private citizens with inhabitants of the insurrectionary areas was vastly circumscribed and restricted by sections 4, 8 and 9 of the Act of July 2, 1864 (13 Stat. 376 and 377). See *United States* v. *Lane*, 75 U.S. (8 Wall.) 185, 186–187 (1869).

[4] In fact, the contrary position was taken by the Supreme Court in *Hamilton* v. *Dillin*, *supra*, 88 U.S. 73. There the appellant contended that a license fee required by Treasury Department regulations to be paid as a condition for obtaining a permit to purchase cotton in insurrectionary areas was illegally exacted on the ground that it was essentially a tax and, therefore, an improper exercise of Congress' power under the Constitution "to lay and collect taxes, duties, imposts and excises." *Id.* at 81. The Court, however, rejected this argument, holding that the license fee was not a tax imposed under the taxing power, but a "bonus" imposed under the war power of the government; that the power of the government to open and regulate trade with the enemy was intended to be conferred upon the President and the Secretary of the Treasury in the Act of July 13, 1861; and that this included the power to impose such conditions as they saw fit, including payment of a license fee. The Court held (*Id.* at 94 and 97):

> * * * The conditions exacted by him [the President] were not imposed in the exercise of the taxing power, but of the war power of the government. The exaction itself was not properly a tax, but a bonus required as a condition precedent for engaging in the trade. * * *
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> It is hardly necessary, under the view we have taken of the character of the regulations in question, and of the charge or bonus objected to by the plaintiffs, to discuss the question of the constitutionality of the act of July 13th, 1861, regarded as authorizing such regulations. As before stated, the power of the government to impose such conditions upon commercial intercourse with an enemy in time of war as it sees fit, is undoubted. It is a power which every other government in the world claims and exercises, and which belongs to the government of the United States as incident to the power to declare war and to carry it on to a successful termination. We regard the regulations in question as nothing more than the exercise of this power. It does not *belong to the same category as the power to levy and collect taxes, duties, and excises.* It belongs to the war powers of the government, just as much so as the power to levy military contributions, or to perform any other belligerent act. [Emphasis added.]

[5] Testimony of Mr. Warren at Hearings on H.R. 4704 (the Trading with the Enemy bill) Before the House Comm. on Interstate and Foreign Commerce, 65th Cong., 1st Sess. (1917), p. 32.

and make more practical a system of license or permit which was provided for by the Government during the Civil War."[6] Thus, section 4 of the Act (40 Stat. 413–414) contained elaborate provisions for control over branches or agencies of enemy corporations and enemy ally corporations doing business in this country, including insurance and reinsurance companies, under a procedure by which they could apply to the President for a "license to continue to do business."

Section 5(a) (40 Stat. 415) gave the President the power to issue (and suspend or revoke) licenses to do business with the enemy or its allies and to perform any act otherwise made unlawful by the Act without such license. Further, section 5(b) (*ibid.*) authorized the President "by means of licenses or otherwise" to investigate, regulate or prohibit any transactions in foreign exchange, export, or earmarkings of coin, bullion, or currency, and evidence of transfers of indebtedness or ownership of property between the United States and any foreign country, whether enemy or neutral, or between residents of one or more foreign countries and any person in the United States.

More particularly, section 5 provided as follows (40 Stat. 415):

> (a) That the President, if he shall find it compatible with the safety of the United States and with the successful prosecution of the war, may, by proclamation, suspend the provisions of this Act so far as they apply to an ally of enemy, and he may revoke or renew such suspension from time to time; and the President may grant licenses, special or general, temporary or otherwise, and for such period of time and containing such provisions and conditions as he shall prescribe, to any person or class of persons to do business as provided in subsection (a) of section four hereof, and to perform any act made unlawful without such license in section three hereof, and to file and prosecute applications under subsection (b) of section ten hereof; and he may revoke or renew such licenses from time to time, if he shall be of opinion that such grant or revocation or renewal shall be compatible with the safety of the United States and with the successful prosecution of the war; and he may make such rules and regulations, not inconsistent with law, as may be necessary and proper to carry out the provi-

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[6] Testimony of Mr. Warren at Hearings on H.R. 4960 (the Trading with the Enemy bill that was subsequently enacted) Before a Subcomm. of the Senate Comm. on Commerce, 65th Cong., 1st Sess. (1917), p. 131. See also testimony of the General Counsel of the Federal Reserve Board, *id.* at pp. 196–216; 55 Cong. Rec. 4852–4857 and 4862–4863 (1917). The Senate Commerce Committee in reporting out H.R. 4960 noted that the bill was susceptible of division into four portions. Thus, the Committee stated (S. Rep. No. 111, 65th Cong., 1st Sess. (1917), p. 3):

> The first portion defines the word "enemy" and prescribes the acts which shall be forbidden and which are made criminal if performed without license.
>
> The second portion provides for a system by which any act otherwise unlawful and criminal may be licensed * * * if compatible with the safety of the United States and the successful prosecution of the war.
>
> The third portion deals with the conservation and utilization of enemy property during the war.
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> The fourth portion deals with the entirely separable question of patents.

sions of this Act; and the President may exercise any power or authority conferred by this Act through such officer or officers as he shall direct.

If the President shall have reasonable cause to believe that any act is about to be performed in violation of section three hereof he shall have authority to order the postponement of the performance of such act for a period not exceeding ninety days, pending investigation of the facts by him.

(b) That the President may investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, export or earmarkings of gold or silver coin or bullion or currency, transfers of credit in any form (other than credits relating solely to transactions to be executed wholly within the United States), and transfers of evidences of indebtedness or of the ownership of property between the United States and any foreign country, whether enemy, ally of enemy or otherwise, or between residents of one or more foreign countries, by any person within the United States; and he may require any such person engaged in any such transaction to furnish, under oath, complete information relative thereto, including the production of any books of account, contracts, letters or other papers, in connection therewith in the custody or control of such person, either before or after such transaction is completed.

Against this background of which Congress was well aware, as evidenced from the Congressional committee hearings, reports and debates in both Houses on the bill,[7] it is clear that section 5 of the Trading with the Enemy Act of 1917 was a revitalization, albeit in more elaborate form, of the licensing provisions of section 5 of the Act of July 13, 1861; that it conferred upon the President the same kind of regulatory licensing authority that was granted the President and Secretary of the Treasury in the 1861 Act; and that this authority was to be exercised not only over trade with the enemy (section 5(a)), but over credit transfers, foreign exchange transactions, exports of precious metals and transfers of evidences of indebtedness or ownership of property between the United States and any foreign country (section 5(b)). It is equally clear that this licensing authority was not intended to be a grant of Congress' power to impose taxes or levy duties on imports. *Hamilton* v. *Dillin*, *supra*, 88 U.S. 73.

Indeed, grave concern was expressed by the Secretary of the Treasury over the fact that the Trading with the Enemy bill as approved by the House (H.R. 4960) did not provide for adequate Presidential control over imports, an omission he considered to be serious. Thus the Secretary explained:[8]

[7] The Congressional hearings, reports and debates thus referred to are cited in footnotes 8, 9, and 10, respectively, of Chief Judge Boe's opinion.

[8] Letter from Treasury Secretary William G. McAdoo to Senator Ransdell, dated Sept. 11, 1917, 55 Cong. Rec. 7013 (1917).

> * * * It may be necessary to regulate the importation of non-essentials of commerce in order to prevent any adverse and objectionable balance of trade involving settlement in gold. Through governmental control of imports it will also be possible to insure the most efficient employment of certain imported raw materials essential to the effective prosecution of the war. It is probable that in the adjustment of trade relations, now so profoundly affected by war conditions, better results could be obtained than are now possible if the Government had control of these matters when dealing with governments that have imposed restrictions upon the exports of raw materials needed by our war industries.

The Senate, upon being apprised of the Secretary's views, approved a recommendation to add to H.R. 4960 a new section 11. This new section, which was subsequently agreed to by the House, provided (40 Stat. 422–423):

> Whenever during the present war the President shall find that the public safety so requires and shall make proclamation thereof it shall be unlawful to import into the United States from any country named in such proclamation any article or articles mentioned in such proclamation except at such time or times, and under such regulations or orders, and subject to such limitations and exceptions as the President shall prescribe, until otherwise ordered by the President or by Congress: *Provided, however*, That no preference shall be given to the ports of one State over those of another.

It is important to note that this broad power over imports conferred upon the President—who could allow their entry into this country "under such regulations or orders, and subject to such limitations and exceptions" as he might prescribe—was not a part of the licensing provisions of the 1917 Trading with the Enemy Act; rather, it was included as a temporary wartime measure which, by its very language remained in effect only "during the present war"[9] and terminated at the close of that conflict.[10] Moreover, it is significant that section 11, which delegated to the President such broad authority over imports, was never reenacted or even proposed for passage in the course of subsequent amendments to the Trading with the Enemy Act.

Section 5 on the other hand was constructed in terms of permanent legislation; accordingly, subsection (a) thereof automatically went into effect again at the outbreak of World War II. See *Markham* v.

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[9] Sections 3(d), 4(b), 13 and 14 of the Trading with the Enemy Act of 1917, which also referred to the "present war," similarly terminated at the conclusion of World War I.

[10] There was one exception to the termination of section 11, which exception was effected by the enactment on November 19, 1919 of H.J. Res. 269 (41 Stat. 361). That statute provided that "notwithstanding the prior termination of the present war," the provisions of the Trading with the Enemy Act and of any Presidential Proclamation issued pursuant thereto which prohibited or controlled the importation of dyes and other products derived from coal tar were to be continued to January 15, 1920.

Cabell, 326 U.S. 404 (1945). Subsection (b), however, by virtue of subsequent amendment, became no longer limited in its application solely to periods of conflict. In this connection, on March 9, 1933, in order to deal with the domestic banking emergency, the President's authority to act under section 5(b) was extended to any "period of national emergency declared" by him, and he was given the power to regulate "by means of licenses or otherwise * * * transfers of credit between or payments by banking institutions." 48 Stat. 1.[11]

On May 7, 1940, Congress by Joint Resolution (54 Stat. 179) (1) authorized the President, under section 5(b), "by means of licenses or otherwise," to regulate transactions in stocks and securities in which any foreign country or national had an interest; and (2) confirmed an Executive Order of April 10, 1940 and regulations issued thereunder restricting all transactions and transfers of credit in which Norway and Denmark (which had been invaded by Germany) or their nationals had an interest.[12]

Section 5(b) was last amended on December 18, 1941, by section 301 of the First War Powers Act of 1941 (55 Stat. 839) in order to give the President more comprehensive control over the seizure, vesting and disposition of all property of any foreign country or national.[13] To accomplish this purpose, the President was authorized, among other things, to regulate "by means of *instructions*, licenses, or otherwise * * * any acquisition holding, withholding, use, transfer, withdrawal, transportation, *importation* or exportation * * * involving any property in which any foreign country or a national thereof has any interest * * *."[14] As summed up by Representative Kefauver on the House floor (87 Cong. Rec. 9865 (1941)):

> It was explained to us by representatives of the Treasury that it was absolutely necessary for the present act—5(b)—to be reenacted in order to enable the Treasury to carry out its policy of freezing certain credits and of handling certain financial interests

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[11] Prior thereto, on September 24, 1918, the President was authorized under section 5(b) to regulate or prohibit "by means of licenses or otherwise" the hoarding or melting of gold or silver coin, bullion or currency, and to regulate (until two years after "the termination of the present war") any transactions in bonds and certificates of indebtedness of the United States. 40 Stat. 966.

[12] See H. Rep. No. 2009, 76th Cong., 3d Sess. (1940), pp. 1–2. In 1941, the House Judiciary Committee pointed out that under the system of property control authorized by the 1940 amendment, "the Government exercises supervision over transactions in foreign property, either by prohibiting such transactions *or by permitting them on condition and under license.*" [Emphasis added.] H. Rep. No. 1507, 77th Cong., 1st Sess. (1941), pp. 2–3.

[13] See H. Rep. No. 1507, *supra*, note 12. See also S. Rep. No. 911, 77th Cong., 1st Sess. (1941), p. 2. With these added powers, the President could "reach enemy interests which masqueraded under * * * innocent fronts." *Clark* v. *Uebersee Finanz-Korp.*, 332 U.S. 480, 485 (1947). On the effect of the 1941 amendment with respect to licensing foreign trade and credit transfers, see Reeves, *The Control of Foreign Funds by the United States Treasury*, 11 Law & Contemp. Prob. 17, 32 et seq. (1945–46).

[14] The words "instructions" and "importation" were added to section 5(b) by the foregoing 1941 amendment. However, there is no indication in the legislative history of this amendment as to the reason for the inclusion of these specific words.

during the war. The explanation made to us, and I think it is carried out in this bill, is that the only change the Treasury wanted in 5(b) of the Trading With the Enemy Act was to give the executive department power not only to passively freeze credits and to negatively handle the operation of some manufacturing plants by a system of licenses or controls that they have to work under at the present time, but also to give the President the power to actively put into operation those interests or those securities or plants that might be taken over and be seized under authority of 5(b) of the present act.

Thus it can be seen that the amendments to section 5(b) successively extended the President's licensing authority in the areas of foreign exchange, banking and currency transactions and transactions involving property in which foreign countries or nationals have an interest.[15]

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[15] For an example of regulations which license or authorize transactions subject to executive control under section 5(b) upon declaration of a national emergency, see the Foreign Assets Control Regulations, as amended, 31 CFR Part 500 (1973). These regulations were first published by the Secretary of the Treasury (to whom the President had delegated the powers conferred upon him by section 5(b), 7 F.R. 1409, February 12, 1942) on December 19, 1950 (15 F.R. 9040) under the national emergency proclaimed by President Truman on December 16, 1950, 64 Stat. A454, which has never been revoked.

Section 500.201 of these regulations as amended, provides in pertinent part:

(a) All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury (or any person, agency, or instrumentality designated by him) by means of regulations, rulings, instructions, licenses, or otherwise, if either such transactions are by, or on behalf of, or pursuant to the direction of any designated foreign country, or any national thereof, or such transactions involve property in which any designated foreign country, or any national thereof, has at any time on or since the effective date of this section had any interest of any nature whatsoever, direct or indirect:

(1) All transfers of credit and all payments between, by, through, or to any banking institution or banking institutions wheresoever located, with respect to any property subject to the jurisdiction of the United States or by any person (including a banking institution) subject to the jurisdiction of the United States;

(2) All transactions in foreign exchange by any person within the United States; and

(3) The exportation or withdrawal from the United States of gold or silver coin or bullion, currency or securities, or the earmarking of any such property by any person within the United States.

(b) All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury (or any person, agency, or instrumentality designated by him) by means of regulations, rulings, instructions, licenses, or otherwise, if such transactions involve property in which any designated foreign country, or any national thereof, has at any time on or since the effective date of this section had any interest of any nature whatsoever, direct or indirect:

(1) All dealings in, including, without limitation, transfers, withdrawals, or exportations of, any property or evidences of indebtedness or evidences of ownership of property by any person subject to the jurisdiction of the United States; and

(2) All transfers outside the United States with regard to any property or property interest subject to the jurisdiction of the United States.

(c) Any transaction for the purpose or which has the effect of evading or avoiding any of the prohibitions set forth in paragraphs (a) or (b) of this section is hereby prohibited.

* * * * * * *

Another example of the exercise under section 5(b) of Presidential authority to regulate international financial transactions is the Foreign Direct Investment Program established pursuant to Executive Order 11387 which was issued on January 1, 1968 (33 F.R. 47) on the basis of the continuing national emergency declared by President Truman in 1950. This program restricts transfers of capital to foreign countries by investors in the United States and requires repatriation to this country by such investors of portions of their foreign earnings and short-term financial assets held abroad.

However, nowhere in the Congressional debates, committee hearings or reports on section 5(b) and the amendments thereto is there even a glimmer of a suggestion that Congress ever intended—or even considered—this section as a vehicle for delegating any of its tariff-making authority.

Furthermore, a finding that the President has the power under section 5(b) to impose whatever tariff rates he deems desirable simply by declaring a national emergency would not only render our trade agreements program nugatory, it would subvert the manifest Congressional intent to maintain control over its Constitutional powers to levy tariffs. The fact is that Congress has never lightly delegated its authority in this area and any delegation of such power has been—with the exception of section 11, the temporary wartime provision of the Trading with the Enemy Act—specific and restricted in its operation.

Thus, our foreign trade agreement program, commencing with the Reciprocal Trade Agreements Act of 1934 (48 Stat. 943), the subsequent amendments thereto, and culminating in the Trade Expansion Act of 1962 (76 Stat. 872), has gradually expanded the authority of the President, in negotiating trade agreements, to modify, increase or reduce duties; however, this authority has always been subject to various restrictions and limitations.[16]

In fact, the legislative history of the trade agreement statutes is enlightening in connection with defendant's claim of authority under the Trading with the Enemy Act. For during the entire course of the Congressional committee hearings,[17] reports,[18] and debates on the trade agreement statutes, it was never once suggested that the President already possessed emergency rate-making authority, either under the Trading with the Enemy Act or any other statute. Rather, it was

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[16] For example, even section 252(a)(3) of the Trade Expansion Act of 1962 (19 U.S.C. 1882(a)(3)), which gives the President substantial tariff-making authority is operative only under clearly defined conditions. It authorizes the President to impose duties or other import restrictions "to the extent he deems necessary and appropriate" on the products of any foreign country or instrumentality, but only in the event that such foreign country or instrumentality establishes or maintains unjustifiable foreign import restrictions against United States agricultural products which impair the value of tariff commitments made to the United States, oppress United States commerce, or prevent the expansion of trade on a mutually advantageous basis. Furthermore, he must first provide an opportunity for the presentation of views concerning such foreign import restrictions which are maintained against United States commerce and, upon request by any interested person, provide for appropriate public hearings. 19 U.S.C. 1882(d).

[17] See Hearings on H.R. 8430 Before the House Comm. on Ways and Means, 73d Cong., 2d Sess. (1934); Hearings on H.R. 8687 Before the Senate Comm. on Finance, 73d Cong., 2d Sess. (1934); Hearings on H.R. 9900 Before the House Comm. on Ways and Means, 87th Cong., 2d Sess. (1962); Hearings on H.R. 11970 Before the Senate Comm. on Finance, 87th Cong., 2d Sess. (1962).

[18] See H. Rep. No. 1000, 73d Cong., 2d Sess. (1934); S. Rep. No. 871, 73d Cong., 2d Sess. (1934); H. Rep. No. 1818, 87th Cong., 2d Sess. (1962); S. Rep. No. 2059, 87th Cong., 2d Sess. (1962); Conf. Rep. No. 2518, 87th Cong., 2d Sess. (1962).

frequently emphasized that the President was being given new power to impose tariffs.[19]

Furthermore, as Chief Judge Boe observed in his analysis of the Trade Expansion Act of 1962, Congress' refusal to accede to the Senate's proposal to insert a new provision (section 353) giving the President carte blanche authority to increase existing duties or impose new ones whenever he deemed it in the national interest, is a reflection of its firm stand against such unfettered and unrestricted delegation of its tariff-making authority to the President.

For all the foregoing reasons, it must be concluded that the regulatory licensing power delegated to the President by section 5(b) of the Trading with the Enemy Act does not include the authority to assess the 10 percent import surcharge here in question.

RE, Judge, concurring.

The pertinent legislative delegations of power do not authorize the President to assess the "surcharge in the form of a supplemental duty" prescribed in Presidential Proclamation 4074. Since the imposition of the surcharge is therefore *ultra vires*, I concur in the result which grants plaintiff's motion for summary judgment.

(C.D. 4551)

VAN CAMP SEA FOOD CO. *v.* UNITED STATES

Canned tuna fish

USUAL CONTAINERS—GENERAL HEADNOTE 6 (b) (i)

The tariff treatment of containers is governed by general headnote 6(b)(i). Since that headnote in its provision for duty-free

[19] See, for example, the following Congressional comments on H.R. 11970, which was subsequently enacted as the Trade Expansion Act of 1962:

Rep. Brown. * * * I do not care which President may be in office, because I have opposed some of those things under a Republican administration just as I am against this proposal now to give the President of the United States unlimited powers in the field of trade tariffs, and import duties such as have never been exercised by any President in the past, have never been granted to any President. * * * 108 Cong. Rec. 11912 (1962).

* * * * * * *

Sen. Curtis. * * * The pending bill represents the greatest delegation of power that has ever been given to any President. Heretofore our trade agreements have prevented a negotiation of 50 percent of the tariffs. This bill authorizes the President to wipe out the tariffs. It also authorizes him to impose tariffs even on goods that are not dutiable at the present time. *Id.* at 19756.

* * * * * * *

Sen. Humphrey. With regard to the first—the *new* authority which this act would delegate to the President: There are those who charge that the Trade Expansion Act would result in the full and complete abandonment of the constitutional authority of Congress to regulate tariffs. This act would do nothing of the kind. What it does is to continue for a limited fixed period the delegation of authority to set tariff rates within limits defined by Congress and with well-established safeguards that has [sic] been in effect since 1934. * * * [Emphasis added.] *Id.* at 19867.

treatment of American-made containers does not allow them to be advanced in value or improved in condition by any means while abroad, the assembly of these tuna cans in Ecuador from flattened cylinders and ends prevents them from obtaining the desired duty-free treatment. Citing, *Seideman Products Co.* v. *United States*, 37 CCPA 83, C.A.D. 423 (1950).

USUAL CONTAINERS—ITEM 807.00—ARTICLES ASSEMBLED ABROAD

The usual unreusable containers of imported merchandise are tariff nonentities whose tariff treatment is governed by general headnote 6(b)(i). Item 807.00 does not cover a situation in which containers of American origin are assembled abroad and into which articles of foreign origin are placed.

Court No. 67/72939

Port of Los Angeles

[Judgment for defendant.]

(Decided July 12, 1974)

Glad, Tuttle & White (*Robert Glenn White* of counsel) for the plaintiff.
Carla A. Hills, Assistant Attorney General (*Joseph I. Liebman* and *Herbert P. Larsen*, trial attorneys), for the defendant.

WATSON, Judge: This case raises the question of whether the cost of the cans in which certain tuna fish was imported should be deducted from the value of the importation. The claims by plaintiff under general headnote 6(b)(i)[1] and item 807.00[2] of the TSUS if granted would

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[1] The text of general headnote 6 is set out *infra*.

[2] Plaintiff has made its claim under item 807.00 as originally enacted and as twice later amended by Pub. L. 89-241, sec. 85 and Pub. L. 89-806, sec. 1(a). By their own terms the later two amendments were made applicable to articles entered before their ordinary effective date if the amendments would have resulted in a smaller amount of duty. Since in my opinion the imported canned tuna fish stands to benefit no more from the later amended language than from the original enactment, only the original item 807.00 need be considered.

The language of item 807.00 in original and amended versions and the unchanged relevant portion of headnote 3 referred to therein are as follows:

Articles assembled abroad in whole or in part of products of the United States which were exported for such purpose and which have not been advanced in value or improved in condition abroad by any means other than by the act of assembly ----------	A duty upon the full value of the imported article, less the cost or value of such products of the United States (see headnote 3 of this subpart).

require the cost or value of the cans to be deducted from the full value [3] of the imported article when duty is assessed under item 112.30.[4]

The record in *Williams, Clarke Co., Van Camp Sea Food Co.* v. *United States*, 62 Cust. Ct. 759, C.D. 3864 (1969), *aff'd*, 58 CCPA 98, C.A.D. 1011 (1971), was incorporated herein.

Item 807.00 (as amended by Pub. L. 89-241, sec. 85, 79 Stat. 933, 949): Articles assembled abroad in whole or in part of fabricated components, the product of the United States, which (a) were exported, in condition ready for assembly without further fabrication, for the purpose of such assembly and return to the United States, (b) have not lost their physical identity in such articles by change in form, shape, or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating, and painting	[A duty same as item 807.00 above.]
Item 807.00 (as amended by Pub. L. 89-806, sec. 1(a), 80 Stat. 1523): Articles assembled abroad in whole or in part of fabricated components, the product of the United States, which (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape, or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating, and painting	[A duty same as item 807.00 above.]

Schedule 8, part 1, subpart B, headnote 3, Tariff Schedules of the United States:

Subpart B headnotes:

* * * * * * *

3. Articles assembled abroad with components produced in the United States.—The following provisions apply only to item 807.00:

(a) The value of the products of the United States assembled into the imported article shall be—

(i) the cost of such products at the time of the last purchase; or

(ii) if no charge is made, the value of such products at the time of the shipment for exportation,

as set out in the invoice and entry papers; except that, if the appraiser concludes that the amount so set out does not represent a reasonable cost or value, then the value of such products shall be determined in accordance with section 402 or 402a of this Act.

(b) The duty of the imported article shall be at the rate which would apply to the imported article itself, as an entirety without constructive separation of its components, in its condition as imported if it were not within the purview of this subpart. If the imported article is subject to a specific or compound rate of duty, the total duties shall be reduced in such proportion as the cost or value of such products of the United States bears to the full value of the imported article.

[3] Of the 6062 cases involved herein 3000 were appraised at $6.75 per case and 3062 at $6.85 per case.

[4] There is no dispute that the importation is classifiable under item 112.30, the relevant language reading as follows:

Schedule 1, part 3, subpart C, Tariff Schedules of the United States:	
Fish, prepared or preserved in any manner, not in oil, in airtight containers:	
* * * * * * *	
Tuna:	
112.30 In containers weighing with their contents not over 15 pounds each * * *..	12.5%ad val.

The cans in which this tuna was imported were assembled in Ecuador from can segments made in the United States. The can segments consisted of ends and cylinders exported in collapsed form for the purpose of reducing shipping volume and cost. There was no difference in price to the plaintiff between the can in flattened form and in partially assembled form, that is with one end open.

In Ecuador the cylinder segment was opened by spinning on rubber rollers. Lips called flanges were formed on the cylinder by the discs of a flanging machine which forced the open edges of the cylinder in an outward direction. On another machine the ends were joined to the cylinder by compressing the flanges and the ends together. Between the joining of the first and second end, of course, a piece of prepared tuna fish was packed into the can. Labels were then glued to the cans, and they were packed six in a case for shipment to the United States. It is not disputed that these cans are the usual type of container for their contents and are not designed for, or capable of, reuse.

Defendant's most telling attack on plaintiff's claim is based on general headnote 6 of the TSUS which deals specifically with the tariff treatment of containers.

General headnote 6, TSUS:

> 6. Containers or Holders for Imported Merchandise. For the purposes of the tariff schedules, containers or holders are subject to tariff treatment as follows:
>
> (a) Imported Empty: Containers or holders if imported empty are subject to tariff treatment as imported articles and as such are subject to duty unless they are within the purview of a provision which specifically exempts them from duty.
>
> (b) Not Imported Empty: Containers or holders if imported containing or holding articles are subject to tariff treatment as follows:
>
> (i) The usual or ordinary types of shipping or transportation containers or holders, if not designed for, or capable of, reuse, are not subject to treatment as imported articles. Their cost, however, is, under section 402 or section 402a of the tariff act, a part of the value of their contents and if their contents are subject to an ad valorem rate of duty such containers or holders are, in effect, dutiable at the same rate as their contents, except that their cost is deductible from dutiable value upon submission of satisfactory proof that they are products of the United States which are being returned without having been advanced in value or improved in condition by any means while abroad.
>
> (ii) The usual or ordinary types of shipping or transportation containers or holders, if designed for, or capable of, reuse, are subject to treatment as imported articles separate

and distinct from their contents. Such holders or containers are not part of the dutiable value of their contents and are separately subject to duty upon each and every importation into the customs territory of the United States unless within the scope of a provision specifically exempting them from duty.

(iii) In the absence of context which requires otherwise, all other containers or holders are subject to the same treatment as specified in (ii) above for usual or ordinary types of shipping or transportation containers or holders designed for, or capable of, reuse.

The deciding language in the above headnote is the requirement in 6(b)(i) that for the cost of the usual unreuseable containers to be deductible from dutiable value proof must be submitted that they were made in the United States and are being returned "* * * without having been advanced in value or improved in condition by any means while abroad."

It seems inescapable to me that the imported containers have been advanced in value or improved in condition by means of assembly and that the fatal effect of the words "by any means" cannot be avoided. I have explored the possibility that, despite the apparent absolute tone of 6(b)(i), it might still be broad enough to encompass the change wrought by the assembly of the can but in the end I had to reject this approach. If I could make an analogy between the assembly of these cans and the folding of paper boxes (those in which flaps are inserted one into another), I could perhaps call it an assembly without an advancement in value or improvement in condition and justify it as one justifies a "de minimis" situation. In reality, however, I see the imported container as being improved in a significant degree from its original unassembled condition by an assembly process which is more than simple or casual. I cannot therefore overlook the improvement in condition.

I am also dissuaded from glossing over the significance of the assembly process by the residual effects of the decision in *Seideman Products Co.* v. *United States*, 37 CCPA 83, C.A.D. 423 (1950). In that case involving facts strikingly similar to those herein, the importer's claim for duty-free entry of certain tuna cans under paragraph 1615(a) of the Tariff Act of 1930 was rejected. The relevant language of paragraph 1615(a) required that the cans be returned "* * * without having been advanced in value or improved in condition by any process of manufacture or other means." The court, at page 88, stated "[t]hat the knocked-down cans * * * have been improved in value by a manufacturing operation so as to constitute usable cans, in our opinion, cannot be gainsaid." The operation referred to was substantially similar to the one which took place in this case.

Although in the period since that decision a new tariff act has come into effect with a more detailed array of headnotes and provisions dealing with the duty-free entry of American-made containers, products or components, the similarity between the language of paragraph 1615(a) and general headnote 6(b)(i) cannot be ignored. Subsequent decisions under item 807.00 which took an expansive view of assembly [5] may cause us to view as excessive the characterization of the assembly of the can in the *Seideman* case as manufacturing. Nevertheless, under general headnote 6(b)(i), it is not the choice of a word such as manufacturing or fabricating or assembling which controls but the fact that the process to which the can had been subjected, whatever we call it, had advanced it in value or improved it in condition. Thus, the attitude expressed in the *Seideman* case remains valid and influential and is another factor which determines my reading of general headnote 6(b)(i).

Finally, as regards the interpretation of 6(b)(i), I must take into account the fact that item 807.00 specifies assembly as the only means of advancing a product in value or improving its condition which will not disqualify it for duty-free treatment. This naturally suggests that assembly which normally advances the value or improves the condition of a product must be specifically permitted. Since general headnote 6(b)(i) does not mention assembly as a permissible additional process, I see no way the assembly of the imported cans can come within a plausible interpretation of 6(b)(i).

Since for the reasons discussed above the cans cannot obtain duty-free treatment under the conditions set out in general headnote 6(b)(i), it remains to be seen only whether item 807.00 can provide the duty-free treatment desired by the importer.

First, I cannot help but be impressed by the existence of a headnote devoted exclusively to the importation of containers. If there is a headnote dealing specifically with the tariff treatment of containers and if that headnote describes in very definite terms the circumstances under which the cost of usual containers shall be deducted from dutiable value, then it becomes extremely difficult to give those containers more generous terms under a provision whose coverage of containers is problematical. Thus, I cannot interpret a provision which speaks of assembling articles abroad to cover the canning of food because of my awareness of headnote 6(b)(i).

Second, my understanding of item 807.00 is influenced by the use of the word "assembled" in the phrase "[a]rticles assembled abroad." I am of the opinion that word indicates a process of manipulation

[5] See for example, *General Instrument Corporation* v. *United States*, 59 CCPA 171, C.A.D. 1062, 462 F. 2d 1156 (1972); see also, *C. J. Tower & Sons of Buffalo, Inc.* v. *United States*, 62 Cust. Ct. 643, C.D. 3840, 304 F. Supp. 1187 (1969).

of the components other than canning or packaging. In other words, I believe item 807.00 speaks of articles which have gone through an assembly stage of a manufacturing process prior to being packed for shipping.

Third, I am persuaded by the pattern of the item 800.00 series for articles exported and returned and the interrelationship with general headnote 6 that the former are intended to encompass containers only when they are specifically provided for. For example, item 808.00 [6] specifically provides for the duty-free status of reusable substantial containers, and the headnote of schedule 8, part 1, subpart C in which item 808.00 appears makes specific reference to general headnote 6(b)(ii). Most importantly, headnote 1 of subpart C [7] refers to general headnote 6 in connection with its mention that the subpart covers only substantial reusable containers which are "subject to treatment as imported articles." This indicates to me a clear awareness that only those containers which by virtue of general headnote 6 are subject to treatment as independent imported articles can come within the purview of specific tariff items elsewhere in the tariff schedules. While I do not generally make much of the characterization of importations as "articles" or "products", I do see a legitimate distinction between usual containers and importations which the tariff schedules are generally inclined to refer to as "articles" or "products". As a rule, the usual containers are tariff nonentities which are not articles or products in the ordinary sense of the tariff act. The recent case of *Kurt S. Adler, Inc.* v. *United States*, 61 CCPA 68, C.A.D. 1122 (1974) makes it clear that the usual containers of imported articles are not to be treated as separate articles or products. In that case the non-communist origin of a portion of the usual container of an article of communist origin was to no avail in an attempt to obtain a preferred nation rate of duty for the disputed "non-communist" portion.

It would logically appear that the American origin of the container and the possible acceptability of its assembly abroad are to no avail when a usual container cannot be considered as a product apart from its contents. Item 807.00 presupposes the separate consideration of a product of American origin a premise inconsistent with the prevailing view of usual containers. It must follow that plaintiff's claim under item 807.00 cannot be reconciled with the correct tariff treatment of the containers in question which requires that they be treated as nonentities.

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[6] "Substantial containers and holders, if products of the United States (including shooks and staves of United States production when returned as boxes or barrels containing merchandise) * * *."

[7] "This subpart covers only substantial containers and holders which are of the usual or ordinary types used in the shipment or transportation of goods and which are reusable for such purposes and subject to treatment as imported articles (see general headnote 6(a) and (b)(ii))."

In conclusion, I must admit to a certain sense of dissatisfaction at the existence of a situation in which an article might stand a better chance of obtaining duty-free status for one of its component products under item 807.00 than an imported canned or "contained" product stands for obtaining duty-free status for its container under general headnote 6(b)(i) even though what is done to the container abroad may be no more than would be permissible under an item 807.00 "assembly" situation. Nevertheless, since I am of the opinion that general headnote 6(b)(i) is meant to operate on importations involving ordinary unreusable containers of American origin and item 807.00 is not I can only suggest that the ultimate resolution of this problem may be legislative rather than judicial. In light of my views regarding general headnote 6(b)(i), it would take an amendment of that headnote to provide that the assembly abroad of usual unreusable containers of American origin does not bar them from duty-free status.

Judgment will be entered accordingly.

(C.D. 4552)

PARTS MANUFACTURING ASSOCIATES, INC. *v.* UNITED STATES

Furniture—Aircraft seats

Passenger aircraft seats manufactured in England and connected into a track built into the floor of the YS–11, an intermediate transport passenger aircraft, were properly classified under item 727.55 as parts of furniture not specially provided for, and assessed with duty at the rate of 16 per centum ad valorem. Plaintiff's primary claim for classification under item 694.60 of the tariff schedules as parts of aircraft, dutiable at the rate of 7 per centum ad valorem overruled.

CLASSIFICATION OF IMPORTATIONS AS "PARTS"—DETERMINATION

Whether importations at bar are to be classified as "parts," for customs duty purposes, depends upon the pertinence or applicability of the competing provisions of the tariff schedules, and the meaning of "parts" in customs law. As to the former, the pertinent headnote clearly expresses congressional intent that the term "furniture" includes aircraft furniture. As applied to aircraft, passenger seats comprise a substantial, if not a major, portion of aircraft furniture. The latter requires an examination of General Interpretative Rule 10(ij) which states that a "provision for 'parts' of an article covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision for such part."

The applicability of rule 10(ij) "assumes the existence of a 'specific provision' which covers the 'part' of the particular article." See

Vilem B. Haan et al. v. *United States*, 332 F. Supp. 182, 67 Cust. Ct. 104, C.D. 4260 (1971). In the case at bar, even if the aircraft seats may otherwise be deemed "parts" of the aircraft, they cannot be classified as "parts" since they are included in the "more specific" provision for furniture.

LEGISLATIVE INTENT—STATUTORY CONSTRUCTION

There is no doubt as to the legislative intent that aircraft seats are aircraft furniture included in the tariff item covering furniture. A cardinal principle of statutory construction requires courts to give effect to the intent of the legislature in an area reposing within its competence.

Court Nos. 70/53017, 70/53022, and 70/53023

Port of Charleston, S.C.

[Judgment for defendant.]

(Decided July 17, 1974)

Byrum, Byrum & Burris (*Robert N. Burris* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RE, Judge: The question presented in this case pertains to the proper classification, for customs duty purposes, of certain aircraft passenger seats. The seats were manufactured in England and entered at the port of Charleston, South Carolina in 1969. At the trial, on plaintiff's motion, and without objection, Court Nos. 70/53017, 70/53022, and 70/53023, were consolidated.

The seats were classified by the customs officials under item 727.55 of the Tariff Schedules of the United States as "[f]urniture, and parts thereof, not specially provided for: * * * [o]ther." Duty was consequently assessed at the rate of 16 per centum ad valorem. Plaintiff contests that classification, and urges that the proper classification is under one of two suggested tariff items.

Plaintiff's primary claim is that the aircraft seats are properly classifiable under item 694.60 of the tariff schedules which covers other parts of aircraft and spacecraft, with a duty of 7 per centum ad valorem. Alternatively, plaintiff urges that the aircraft seats are properly dutiable under item 727.02 of the tariff schedules, with duty at the rate of 9 per centum ad valorem. Item 727.02 covers "dentists', barbers' and similar chairs," and, in essence, plaintiff maintains that the aircraft chairs are *ejusdem generis* with those enumerated in the alternatively claimed tariff item.

The key to the proper classification of any imported article is always to be found in the various competing provisions of the tariff schedules.

Many anomalies of classification of merchandise tend to disappear when the competing items are compared, and the underlying congressional intent is given effect.

In the case at bar, aircraft seats were classified as furniture, whereas the importer maintains that they should have been classified as other parts of aircraft, or as chairs similar to dentists' or barbers' chairs.

The following are the pertinent statutory provisions:

"General Interpretative Rules. For the purposes of these schedules—

* * * * * * *

[10](ij) a provision for 'parts' of an article covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision for such part."

Classified under:

Schedule 7, part 4, subpart A:

"Subpart A headnote:

1. For the purposes of this subpart, the term 'furniture' includes movable articles of utility, designed to be placed on the floor or ground, and used to equip dwellings, offices, restaurants, libraries, schools, churches, hospitals, or other establishments, aircraft, vessels, vehicles, or other means of transport, gardens, patios, parks, or similar outdoor places, even though such articles are designed to be screwed, bolted, or otherwise fixed in place on the floor or ground; and kitchen cabinets and similar cupboards, seats and beds, and sectional bookcases and similar sectional furniture, even though designed to be fixed to the wall or to stand one on the other; but the term does not include—[Exceptions not applicable.]"

* * * * * * *

"Furniture, and parts thereof, not specially provided for:

* * * * * * *

727.55 Other ---------- 16% ad val."

Claimed under:

Schedule 6, part 6, subpart C:

"Aircraft and spacecraft, and parts thereof:

* * * * * * *

694.60 Other parts---------- 7% ad val."

Claimed under (alternatively):

Schedule 7, part 4, subpart A:

"Furniture designed for hospital, medical, surgical, veterinary, or dental use; dentists', barbers' and similar chairs with mechanical elevating, rotating, or reclining movements; and parts of the foregoing:

727.02 Dentists', barbers' and similar chairs with mechanical elevating, rotating, or reclining movements, and parts thereof---------- 9% ad val."

There is no factual dispute. The importations consist of aircraft passenger seats ordered for installation in the YS–11 aircraft. The seats were specifically designed for the YS–11 which is an intermediate transport passenger aircraft. The seats were especially constructed to meet certain Federal Aviation Administration requirements. They contain armrests, removable cushions for life flotation equipment, ash trays, holes for receiving meal trays, seat belts, and meal trays on their backs. Each of the seats were connected into a track built into the floor of the aircraft.

Plaintiff, in its brief, asserts that it submitted "uncontroverted evidence that said seats could only be used for the YS–11 aircraft and were an integral part thereof, and further that the YS–11 aircraft as presently configured and certified by the [Federal Aviation Administration] could only be used as a passenger aircraft and that these seats were an essential part and that the YS–11 aircraft was incapable of properly functioning without them." (Plaintiff's brief, p. 2)

Plaintiff cites certain cases in support of its primary contention that the seats should have been classified, and held dutiable, as parts of aircraft. There exists a great wealth of judicial literature on the subject of what constitutes "parts" for customs duty purposes. "Parts" is a word of art in customs law. Indeed, its development and evolution is an interesting one. No purpose, however, would be served to review the many cases that have given the word its present meaning. See discussion of leading cases in *Vilem B. Haan et al.* v. *United States*, 332 F. Supp. 182, 67 Cust. Ct. 104, C.D. 4260 (1971).

In support of its contention that the seats are to be classified as parts of aircraft, in addition to the *Vilem B. Haan* case plaintiff relies on *Herbert G. Schwarz, dba Ski Imports* v. *United States*, 284 F. Supp. 792, 60 Cust. Ct. 522, C.D 3447 (1968), *aff'd*, 417 F.2d 1391, 57 CCPA 19, C.A.D. 971 (1969); *Sankyodai Corp.* v. *United States*, 62 Cust. Ct.

630, C.D. 3837 (1969) and *Engis Equipment Company* v. *United States*, 284 F. Supp. 798, 60 Cust. Ct. 436, C.D. 3413 (1968).

In all of the cited cases the law of "parts" was discussed to the extent therein deemed necessary. In the *Vilem B. Haan* case, headrests for automobile seats had been classified under a tariff provision that covered pillows, cushions, mattresses and similar furnishings. Since the headrests had been designed, and were used extensively as automobile seat headrests, for the comfort and safety of front seat passengers in automobiles, the court held that they should properly have been classified under the provision covering "[f]urniture designed for motor-vehicle use, and parts thereof."

In the *Herbert G. Schwarz* case the Court of Customs and Patent Appeals affirmed this court in sustaining the classification of certain automobile "luggage racks" and "ski carriers" under a provision that covered articles of iron or steel, not coated or plated with precious metal. The courts thereby overruled the importer's claim that the merchandise should have been classified as fittings or mountings designed for motor vehicles.

In the *Sankyodai Corp.* case wooden seats for use in certain plastic boats were classified as parts of yachts or pleasure boats. The importer conceded that they were dedicated for use as parts of such yachts or pleasure boats, but contended that they were more specifically provided for under the tariff provisions that covered furniture of wood. In sustaining the classification of that particular importation the court stated:

> "The most that the evidence at bar establishes insofar as the seat is concerned is that the imported merchandise constitutes part of an article which when complete becomes a boat seat. And such proof is of no value here in any case absent a claim for classification under a provision for 'parts'. It, therefore, follows that *plaintiff has wholly failed to present any evidence which defeats the classification of the instant merchandise as parts of pleasure boats.* Consequently, the protests are overruled." (Emphasis added.) 62 Cust. Ct. at 634.

In the *Engis Equipment Company* case plaintiff maintained that certain projectors, scales and zero setting attachments were parts of jig-boring machine tools. Since plaintiff "failed to show that the imports involved were manufactured and dedicated solely for use on jig-boring machine tools and had no other useful purpose," the protest was overruled.

In the present case, in support of its primary claim, plaintiff has quoted passages from the opinions of the cited cases for the purpose of persuading the court that the aircraft seats are *parts* of the aircraft. Whether they are to be classified as *parts*, for customs duty

purposes, however, depends upon the pertinence or applicability of the competing provisions of the tariff schedules, and the meaning of "parts" in customs law.

The aircraft seats have been classified as "furniture," and there is a statutory presumption that they have been correctly classified. 28 U.S.C. § 2635(a) (1970). See also *Sanji Kobata et al.* v. *United States*, 326 F. Supp. 1397, 66 Cust. Ct. 341 (1971); *Nishimoto Trading Company, Ltd., et al.* v. *United States*, 72 Cust. Ct. 53, C.D. 4504 (1974), appeal pending.

Headnote 1, subpart A, part 4, schedule 7 sheds considerable light upon the congressional intent as to what articles constitute furniture. In pertinent part, that headnote states that:

> "* * * the term '*furniture*' includes movable articles of utility, designed to be placed on the floor or ground, and used to equip * * * aircraft * * * even though such articles are designed to be screwed, bolted, or otherwise fixed in place on the floor * * *."

The headnote makes it abundantly clear that the term "furniture" includes aircraft furniture. Furthermore, it is obvious that, as applied to aircraft, passenger seats comprise a substantial, if not a major, portion of aircraft furniture. Consequently, it is important to determine the applicability of General Interpretative Rule 10(ij) to the case at bar.

General Interpretative Rule 10(ij) states that a "provision for 'parts' of an article covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision for such part." Clearly, therefore, even if the aircraft seats may otherwise be deemed to be "parts" of the aircraft, they cannot be classified as "parts" if they are included in the more "specific provision" for "furniture."

The meaning and applicability of rule 10(ij) has been treated in a large number of cases. See *United States* v. *General Electric Co.*, 58 CCPA 152, C.A.D. 1021 (1971). In many of the cases, the question was whether the importation was, in fact, included in the "specific provision." As stated in the *Vilem B. Haan* case, the applicability of rule 10(ij) "assumes the existence of a 'specific provision' which covers the 'part' of the particular article." 67 Cust. Ct. at 111. For example, in the *Vilem B. Haan* case, the court held that automobile headrests were not specifically provided for in the provision under which they were classified. The specific provision there covered "pillows [or] cushions," not "automobile headrests." Hence, since they were not provided for in "a specific provision for such part," they were deemed properly classifiable as *parts* of furniture designed for motor vehicle use.

As illustrated in the *Vilem B. Haan*, case, whether the particular article is specifically provided for, i.e., whether there is a "specific

provision for such part," is not always free from doubt. In all cases the court must determine if the "part" is embraced in the *eo nomine* or "specific provision." If it is, then, by virtue of rule 10(ij), such a specific provision prevails over a "parts" provision.

Recently, for example, in *Oxford International Corp.* v. *United States*, 72 Cust. Ct. 187, C.D. 4540 (1974), the court had to determine whether a bicycle mirror was specifically provided for in a tariff provision that covered mirrors. The tariff provision covered mirrors, with or without frames or cases, not over one square foot in reflecting area. The importation consisted of a mirror head, which was framed, together with other parts that comprised a "mounting bracket" to permit attachment of the bicycle mirror to a bicycle handlebar. It was admitted that the bicycle mirror, consisting of the mirror portion and the mounting portion, comprised a commercial unit dutiable as an entirety.

The court, after examining the importation, determined that the challenged specific provision for mirrors did not embrace the entirety known and sold as a bicycle mirror which contains a quantity of parts in addition to the mirror itself. Hence, the court held that the bicycle mirror was, for customs duty purposes, classifiable and dutiable, as other parts of bicycles, as claimed.

In the present case, a reading of the furniture provision, together with the preceding headnote, leaves no doubt that the aircraft seats were intended to be included in the furniture provision. To classify the aircraft seats as parts of aircraft, as claimed, would be tantamount to denying judicial effect to that portion of the headnote that pertains to aircraft furniture.

The headnote clearly expresses the legislative intent that aircraft furniture be included in the furniture provision. No citation of authority is required for the cardinal principle of statutory construction that requires that the courts give effect to the intent of the legislature in an area reposing within its competence.

Since the court finds that the aircraft seats are aircraft furniture, included in the tariff item covering "furniture," it follows that the classification of the customs officials was correct.

Plaintiff cites a number of cases for the proposition that if the classification of an article is in doubt, the court will resolve that doubt in favor of the importer since the intention of Congress to impose a higher duty should be expressed in clear and unambiguous language. *American Net & Twine Co.* v. *Worthington*, 141 U.S. 468 (1891); *Hartranft* v. *Wiegmann*, 121 U.S. 609 (1887). These cases and others, however, are not controlling where, as in the case at bar, there is no doubt as to the legislative intent of Congress. See *United States* v. *St. Joseph's Church*, 48 CCPA 42, 45, C.A.D. 761 (1960).

In view of the foregoing, it is the determination of the court that plaintiff has not succeeded in proving that the aircraft seats were erroneously classified, and that they should have been classified as parts of aircraft, as claimed.

It is the determination of the court that the aircraft seats were correctly classified under item 727.55 of the tariff schedules, as other furniture. Consequently, it is not necessary to pass upon plaintiff's alternative claim that they are similar to dentists' and barbers' chairs under item 727.02 of the tariff schedules. No proof was submitted at the trial which would permit a finding that the aircraft sets are "similar" to dentists' or barbers' chairs. It may, nevertheless, be stated that nothing before the court would lend support to the assertion that Congress considered aircraft seats to be *ejusdem generis* with the special purpose chairs specifically named in item 727.02. See provision 94.02 and *Notes* thereto in *Explanatory Notes to the Brussels Nomenclature* (1967).

The classification of the customs officials, which classified the imported aircraft passenger seats under item 727.55 of the tariff schedules, is sustained. Judgment will issue accordingly.

(C.D. 4553)

PITTSBURGH PLATE GLASS COMPANY *v.* UNITED STATES

Ceramic products

REFRACTORY BRICKS—TANK BLOCKS

"Tank blocks" (flux blocks) imported in various sizes and shapes, mostly rectangular (1 by 2 by 3 feet) used in constructing a refractory lining in the lower portion of the tin bath of the float-glass furnace at plaintiff's glassmaking facility, which lining acts as a thermal insulation to resist the action of molten tin employed in the float-glass production process, are "refractory bricks" within the common meaning of that term; and thus are properly dutiable under item 531.27, TSUS, as claimed by plaintiff, rather than under item 531.39 as refractory articles not specially provided for, as assessed by the Government.

REFRACTORY BRICKS—COMMON MEANING

"Refractory bricks" (fire brick) are heat-resistant articles used in the construction of linings for furnaces, ovens, and similar installations. *John C. Rogers & Co., Inc., a/c Hoeganaes Sponge Iron Corp.* v. *United States*, 64 Cust. Ct. 12, C.D. 3952 (1970), *aff'd* 58 CCPA 104, C.A.D. 1012, 436 F.2d 1034 (1971), cited.

REFRACTORY BRICKS—EO NOMINE DESIGNATION

Item 531.27, TSUS is an *eo nomine* designation without limitation, and therefore includes all forms of refractory bricks, absent any showing of contrary legislative intent, judicial decision, or administrative practice. Cf. *Nomura (America) Corp.* v. *United States*, 58

CCPA 82, 85, C.A.D. 1007, 435 F.2d 1319 (1971). Therefore, the provision in item 531.27, TSUS is not limited in its scope to standard straight refractory bricks.

REFRACTORY BRICKS—CRITERIA—SIZE AND SHAPE

Size and shape are not essential criteria for fire brick (refractory bricks). Thus, "tank blocks" (flux blocks) of different sizes and shapes, mostly rectangular, measuring 1 by 2 by 3 feet and weighing 800 to 900 pounds each, are not precluded from classification as "refractory bricks" under item 531.27, TSUS because of their size or shape. *Rogers, supra*, at page 18, cited.

REFRACTORY BRICKS—KNOWN AS "BLOCKS"

The fact that the imports were generally bought, sold and known in the trade as "blocks" (viz., tank blocks or flux blocks), rather than as "bricks" does not preclude the classification of the imports as "refractory bricks" under item 531.27, TSUS. *Rogers, supra*, at page 18, cited.

Court Nos. 66/53432–B and 66/72134

Port of New York

[Judgment for plaintiff.]

(Decided July 18, 1974)

Barnes, Richardson & Colburn (*Rufus E. Jarman, Jr.* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*John A. Gussow*, trial attorney), for the defendant.

NEWMAN, Judge: The issue in these two consolidated protests concerns the proper rate of duty on merchandise invoiced as "tank blocks",[1] produced in West Germany and imported by plaintiff at the port of New York in 1965. The "tank blocks" were classified by the Government under the provision in item 531.39 of the Tariff Schedules of the United States (TSUS) for "Other" shaped refractory and heat-insulating articles not specially provided for, and assessed with duty at the rate of 15 per centum ad valorem. Plaintiff claims that the articles are properly dutiable under the provision in item 531.27, TSUS for refractory and heat-insulating *bricks* at the rate of 3 per centum ad valorem.

STATUTE INVOLVED

Schedule 5, part 2, subpart A, TSUS:

Refractory and heat-insulating bricks of all sizes and shapes:	
* * * * * * *	

[1] It may be noted that the merchandise was described by the customs examiner as "bricks" on the "Notice of Action Increase in Duties" (customs form 5555).

531.27	Other bricks	3% ad val.
	Shaped refractory and heat-insulating articles not specially provided for * * *:	
	* * * * * * *	
531.39	Other	15% ad val.

The Issue

Since it is undisputed that the imports are refractory, the sole issue presented for determination is whether the imports are refractory "bricks" within the common meaning of that term.

I have concluded that the protests should be sustained.

The Record

The record comprises the testimony of four witnesses on behalf of plaintiff and one witness on behalf of defendant. Additionally, plaintiff submitted eight exhibits, including a stipulation of fact and the official papers; and defendant submitted six exhibits.

The stipulation reads as follows:

> The articles in question were manufactured at the Niederlahnstein Works of Didier Werke A.G. They were pneumatically rammed of clays and fired to a temperature of 1,100°C in an intermittent kiln fueled by gas produced from lignite coal. The fired block were surface dressed with silicon carbide wheels and the bolt holes were drilled.

Approximate chemical analysis and selected physical properties of the imported articles are as follows:

Chemical Analysis

SiO_2	70.7%
Al_2O_3	22.8%
Fe_2O_3	0.59%
TiO_2	1.9%
CaO	0.2%
MgO	0.3%
K_2O	2.7%
Na_2O	0.5%
V_2O_5	0.01%

Physical Properties

Refractoriness (Seger Cone)	30½ (1,689°C)
% Apparent Porosity	20.2
Bulk Density	124#/ft.³
Thermal Conductivity	5.0 at 200°C 7.7 at 800°C

The imported articles were used to line the lower portion of the float chamber in the float glass production process.

The float glass production process involves the mixing of batch ingredients, introduction to a melting furnace, and discharge of the finished molten glass to a float bath chamber. Within this chamber the glass spreads onto the surface of molten tin and is continuously drawn through a diminishing temperature environment in such a way that the glass hardens to its final form and is conveyed out of the float chamber into an annealing oven and thence to final processing and packing. The articles in question function to contain the molten tin, provide thermal insulation, and minimize contact between the tin and the outer casing.

The imported articles in question are provided with counterbored holes to permit them to be fixed in place by bolts welded to the steel casing. This also prevents their flotation by the hydrostatic head of molten tin. The counterbore is filled with a ceramic mortar after the bolts are secured. This procedure prevents contact between the bolt heads and the molten tin. Each block is set with a precalculated expansion gap between adjacent block elements so that when heated the exposed surface of the refractory is as monolithic as possible.

The testimony of record further establishes:

The imported articles, referred to in the trade as "tank blocks" or "flux blocks," were imported for use in constructing a refractory lining in the tin bath of the float-glass furnace at plaintiff's glass-making facility at Crystal City, Missouri. The blocks were of various shapes and sizes, the majority of blocks being rectangular and measuring approximately 1 by 2 by 3 feet, and weighing between 800 and 900 pounds.

After the tank blocks arrived at plaintiff's plant at Crystal City, they were placed individually across the bottom of a steel containing pan, in accordance with detailed drawings of the refractory lining, and bolted in place. The relatively large sizes of the tank blocks are dictated by this practice of bolting the individual blocks to a substructure, and by the fact that the large units minimize the number of joints which are more susceptible to the corrosive action of the molten materials than are the blocks.

Contentions of the Parties

While admitting that the tank blocks are larger than ordinary construction or refractory bricks, plaintiff contends that use, not size, is the determinant criterion of what constitutes a refractory brick for tariff purposes. Thus, plaintiff argues that the use of the tank blocks in constructing a refractory lining for the tin bath of a float-glass furnace constitutes the blocks as "refractory bricks" within the common meaning of the term.

Defendant, on the other hand, does not dispute that the merchandise is refractory, but insists that the tank blocks are not "bricks" within the common meaning of the term.

COMMON MEANING OF "REFRACTORY BRICK"

It is, of course, fundamental in determining the common meaning of a term or word used in a tariff provision that court decisions, dictionary definitions and other lexicographical authorities may be considered. Thus, in *John C. Rogers &Co., Inc., a/c Hoeganaes Sponge Iron Corp.* v. *United States*, 64 Cust. Ct. 12, C.D. 3952 (1970), *aff'd* 58 CCPA 104, C.A.D. 1012, 436 F.2d 1034 (1971), the issue presented was whether certain tubes and rings fell within the common meaning of the term "fire brick" in paragraph 201(a) of the Tariff Act of 1930.[2] After reviewing various dictionaries, encyclopedias, and administrative publications, Judge Landis (writing for the Third Division) stated the criteria for classifying "fire brick" as follows (64 Cust. Ct. at page 16):

> * * * We find that all sources [for searching out the meaning of a tariff term], some of which plaintiff cites, conjoin in the common understanding that *the essential criteria of a "fire brick" are that it is a heat resistant article used in the construction of linings for furnaces, ovens, and similar installations.* [Emphasis added]

In *Rogers*, the trial court held that the tubes and rings were not "fire brick", and observed (64 Cust. Ct. at page 19):

> It remains only to decide whether these imported tubes and rings "fairly and clearly" meet the essential criteria for "fire brick" which, as we have found, in 1930 included only articles made of heat resistant material, used in the construction of furnaces, ovens, and the like. We conclude that they do not.
>
> These imported tubes and rings, in the condition as imported, meet rather exacting specifications. * * * All that needs be done is to assemble the tubes and rings into a chamber which may, or may not be, akin to a furnace, oven, or exotic sagger. Assembling the tubes and rings into a chamber is not "fairly and clearly" like constructing a furnace or oven. Fire brick used in the construction of a furnace or oven also connotes a masonry unit of a sort. These tubes and rings are not used as masonry units. They are prefabricated units designed to fit together in an orderly manner and more than mere tire brick which, along with some special, but still standard shapes, are used as linings for furnaces and ovens. E.g., *United States* v. *The A. W. Fenton Company, Inc.*, 49 CCPA 45, C.A.D. 794 (1962). There is no need to further expound on the distinctions. They are carefully lexiconed. Nowhere have we found that the word "assemble" is synonymous with the word "construction" or "construct". We are satisfied that these distinctions are valid, and that they are fatal to the classification of these imported tubes and rings as "fire brick". * * *

[2] It is undisputed that the terms "fire brick" and "refractory bricks" are synonymous. *Encyclopaedia Britannica* (1970), vol. 9, page 294. See also *Summary of Tariff Information*, 1920, page 135.

By contrast to the tubes and rings in *Rogers*, the tank blocks in the present case are not prefabricated components designed for mere assembly into a chamber, but rather are large masonry units used to construct the refractory lining for the tin bath of a float-glass furnace. In this respect, the tank blocks differ substantially from the merchandise in *Rogers*.

According to defendant's expert witness, who was an officer of a large United States manufacturer of refractory articles, "tank blocks" are referred to in the trade also as "flux blocks", the terms being synonymous (R.182). Significantly, *Encyclopaedia Britannica* (1970), vol. 9, indicates that "flux blocks" used by the glass industry [3] are refractory bricks. Thus, at pages 294–295 it is stated:

> FIREBRICK. Another descriptive term for this product is refractory brick, which includes a variety of shapes made from nonmetalic minerals and intended for service at high temperatures. The largest consumers of firebrick are the metal and glass industries.
>
> * * * * * * *
>
> Firebrick is vital to the production of glass. Glass furnaces or tanks, as they are called, are elaborate refractory structures in which high rates of melting can be maintained. Glass may be considered as a special and extremely corrosive type of slag. Several materials used in its manufacture, such as soda ash, sodium sulfate, lime and borax, react vigorously with many refractories at high temperatures. For this reason highly siliceous, dense, *fireclay bricks, known as flux blocks*, are much used in the portion of the tank that is in contact with molten glass. * * * [Emphasis added.]

Flux blocks, whether used in the tin bath or in the melting furnace, serve the same general function, viz: provide a heat-resistant lining. In this connection, plaintiff's chief power engineer, who had the responsibility for the design and construction of glass melting furnaces and the selection of refractory bricks and other refractory materials for use in plaintiff's glass plants, testified (R. 32–33):

> Q. Would you describe exactly what the function of these imported articles installed in the flow bath is?—A. Their function primarily is to provide a thermal barrier between the molten tin contained within the flow bath and the metal casing. In addition, they also provide a resistance against corrosion and some structural capability.
>
> Q. How would you describe the function of similar articles used in the melting furnace portion?—A. Similar articles in the melting furnace portion would serve, in general, the same purpose except that they would not be resisting the action of molten tin but rather the action of molten glass.
>
> Q. Do they have a heat saving or insulating function?—A. Yes.

[3] Interestingly, in Walsh Refractories Corporation's sales catalog (defendant's exhibit F), page 134, flux blocks for the glass industry are depicted. On page 132 of the catalog, flux blocks listed as "CAST FLUX No. 71" perform the same function as the imports (R. 169–170).

Q. In both uses?—A. Yes.

Moreover, in *Rogers*, the trial court noted that fire brick is "used in the construction of linings for furnaces, ovens, *and similar installations*." (Emphasis added.) Plainly, the tin bath of the float-glass furnace is a "similar installation" within the meaning of the above-quoted statement. Furthermore, *Encyclopedia Americana* (1953), vol. 11, page 234, points out: "* * * They [fire brick] are used for lining furnaces, *and for all kinds of brick-work exposed to intense heat which would melt common bricks*." (Emphasis added.)

Consequently, I find that whether flux blocks are used in a glass-melting furnace to act as a thermal barrier to molten glass or, as in this case, are used in the tin bath to act as a thermal barrier to resist the action of molten tin, such blocks fall within the common meaning of "refractory brick". In reaching the foregoing conclusion, I have considered defendant's evidence that flux blocks differ from standard straight refractory bricks (as defendant's exhibit B) in such factors as: size, costs, manner of pricing, method of manufacturing, time required to manufacture, finishing procedures after firing, quality control and method of installation. However, I do not deem those factors to be controlling in light of the common meaning of "fire brick" (refractory brick) as enunciated in *Rogers*, which focuses upon the *use* of the heat-resistant article.

Further, defendant's efforts to limit item 531.27, TSUS to "standard" refractory brick such as exhibit B must fail, since item 531.27 is an *eo nomine* designation without limitation, and therefore includes all forms of refractory brick, absent any showing of contrary legislative intent, judicial decision, or administrative practice. Cf. *Nomura (America) Corp.* v. *United States*, 58 CCPA 82, 85, C.A.D. 1007, 435 F. 2d 1319 (1971). The Walsh Refractories Corporation's sales catalog (exhibit F) demonstrates that there are many possible variations in the size and shape of refractory brick. For example, included are such "fire brick shapes" as: standard shiplap tile" from size 2 by 12 by 12 inches to 4 by 12 by 24 inches (page 48); "standard burner blocks" from size 9 by 7½ by 9 inches to 15 by 15 by 9 inches (page 50); and "kiln car tile", concerning which the catalog states: "Custom designs manufactured to meet your particular requirements" (page 55). Obviously, then, "refractory bricks" are not limited to those represented by defendant's exhibit B.

Defendant's contention that refractory bricks are a "handy-size unit" (capable of being held in the hand), predicated upon the testimony of its expert witness (R. 171), is without merit. In *Rogers*, the trial court specifically ruled out size and shape as essential criteria for "fire brick", stating (64 Cust. Ct. at page 18):

> We note that, whenever size and shape are mentioned, it is the consensus of the reference authorities, *supra*, that "fire brick"

> comes in a variety of sizes and shapes. We have, therefore, eliminated size and shape as essential criteria for "fire brick". * * *

Furthermore, the larger shiplap tile and burned blocks listed in the Walsh sales catalog under "fire brick shapes" (pages 48 and 50) could hardly be regarded as "handy-size".

Defendant also makes much of the fact (which is undisputed) that the imports were generally bought, sold and known in the trade as "blocks" (viz., tank blocks or flux blocks), rather than as "bricks". However, this fact does not preclude the classification of the imports as refractory bricks. Indeed, the trial court in *Rogers* (64 Cust. Ct. at page 18) pointed up:

> The judicial principal that it is not how an article is called but how it is used that determines whether it is brick, [cases cited] is equally valid as to "fire brick" as it is to general construction brick.

It may be emphasized, also, that there are "fire brick shapes" depicted in the Walsh sales catalog called "blocks" and "tile" (pages 48, 50, and 55).

Conclusion

In summary, the stipulated facts and the weight of the testimony of record establish that the merchandise in this case falls within the common meaning of "refractory bricks". Accordingly, I hold that the imported merchandise is properly dutiable at the rate of 3 per centum ad valorem under the provision in item 531.27, TSUS for "Refractory and heat-insulating bricks in all sizes and shapes: * * * Other bricks", as claimed by plaintiff.[4]

Judgment will be entered accordingly.

(C.D. 4554)

W. R. Filbin & Co., Inc.,
John V. Carr & Son, Inc.,
and Litho-Strip Corporation,
a division of Amsted Industries,
Inc. *v.* United States

Metal products

Steel Sheets—Enamel Coated—Headnote 1, Part 2, Schedule 6, TSUS

Enamel coated coils of cold rolled and galvanized steel sheets were classified by the government under item 657.20 as "Other" articles of

[4] There is no dispute between the parties that the merchandise is neither chrome bricks, dutiable under item 531.21, nor magnesite bricks, dutiable under item 531.24.

iron or steel. Plaintiffs claim that the imported articles are steel sheets coated with enamel, and that pursuant to headnote 1, Part 2, Schedule 6, the cold rolled sheets are properly classifiable under item 608.87 and the galvanized sheets properly classifiable under item 608.95. Such headnote provides *inter alia* that the provisions of Part 2 are applicable to the products described "whether or not such products have been subjected to treatments to improve the properties or appearance of the metals or to protect them against rusting, corrosion or other deterioration." Specifically permitted by the headnote is "coating with enamel, paint, lacquer, or other non-metallic substances." The parties stipulated that the merchandise was coated with enamel; and the record shows that the purposes of the coating were to protect the metal against corrosion and to improve its appearance.

The court sustained the claim, holding that plaintiffs have proven that the cold rolled steel sheets met all the statutory criteria applicable to classification of cold rolled steel sheets under item 608.87 and of galvanized sheets under item 608.95. See *United States* v. *Globe Shipping Co., Inc.*, 31 CCPA 95, C.A.D. 254 (1943); *W. R. Filbin & Co., Inc.* v. *United States*, 65 Cust. Ct. 194, C.D. 4077 (1970).

TEST FOR DETERMINING WHETHER AN ARTICLE IS A SHEET OF IRON OR STEEL IN ITS BASIC SHAPE OR FORM

The test for determining if an item is a sheet of iron or steel in its basic shape or form so as to come within the provisions of Subpart B, Part 2, Schedule 6 is whether the item is a material from which various articles can be stamped or manufactured.

Court Nos. 68/47804, etc.

Port of Detroit

[Judgment for plaintiffs.]

(Decided July 29, 1974)

Lord, Bissell & Brook (*William K. Johnson* of counsel) for the plaintiffs.

Carla A. Hills, Assistant Attorney General (*Martin L. Rothstein* and *Saul Davis*, trial attorneys), for the defendant.

MALETZ, Judge: These 68 consolidated actions involve the proper tariff classification of certain enamel coated coils of cold rolled and galvanized steel that were imported from Canada and entered at the port of Detroit. The imports were classified by the government under item 657.20 of the tariff schedules as "Other" articles of iron or steel, not coated or plated with precious metal, and assessed duty at the rate of 19% ad valorem.

Plaintiffs claim that this assessment was erroneous and that the importations are properly classifiable as steel sheets, with the cold rolled steel coils dutiable at the rate of 0.1 cent per pound plus 8%

under item 608.87 and the galvanized steel coils dutiable at the same rate under item 608.95.

STATUTES INVOLVED

Classified under:

SCHEDULE 6. – METALS AND METAL PRODUCTS

PART 3. – METAL PRODUCTS

Subpart G. – Metal Products Not Specially Provided For

Subpart G headnotes:

1. This subpart covers only articles of metal which are not more specifically provided for elsewhere in the tariff schedules.

* * * * * * *

Articles of iron or steel, not coated or plated with precious metal:

* * * * * * *

Other articles:

* * * * * * *

657.20 Other ---------- 19% ad val.

Claimed under:

SCHEDULE 6. – METALS AND METAL PRODUCTS

PART 2. – METALS, THEIR ALLOYS, AND THEIR BASIC SHAPES AND FORMS

Part 2 headnotes:

1. This part covers precious metals and base metals (including such metals when they are chemically pure), their alloys, and their so-called basic shapes and forms, and, in addition, covers metal waste and scrap. Unless the context requires otherwise, the provisions of this part apply to the products described by whatever process made (i.e., whether rolled, forged, drawn, extruded, cast or sintered) and whether or not such products have been subjected to treatments to improve the properties or appearance of the metals or to protect them against rusting, corrosion or other deterioration. These treatments include annealing, tempering, case-hardening and similar heat-treatments or nitriding; descaling, pickling, scraping,

scalping and other processes to remove oxidation scale and crust; rough coating with oil, tar, grease, red lead, or other material to prevent rusting; polishing, burnishing, glazing, artificial oxidation, phosphatizing, and other finishing treatments; metallization by cementation, by electroplating, by immersion in a bath of molten metal, or by other means; coating with enamel, paint, lacquer, or other non-metallic substances; and cladding. * * *

* * * * * * *

Subpart B.—Iron or Steel

Subpart B headnotes:

1. This subpart covers iron and steel, their alloys, and their so-called basic shapes and forms, and in addition covers iron or steel waste and scrap.

* * * * * * *

	Plates and sheets of iron or steel, not cut, not pressed, and not stamped to nonrectangular shape (except as provided in item 609.17):	
	Not coated or plated with metal and not clad:	
	* * * * * * *	
	Other:	
	* * * * * * *	
	Pickled or cold rolled:	
608.87	Other than alloy iron or steel	0.1¢ per lb. +8% ad val.
	* * * * * * *	
	Coated or plated with metal:	
	* * * * * * *	
	Other:	
608.95	Other than alloy iron or steel	0.1¢ per lb. +8% ad val.

I

As previously set forth, item 567.20—under which the imported merchandise was classified by the government—"covers only articles of metal which are not more specifically provided for elsewhere in the tariff schedules." See headnote 1, Subpart G, Part 3 of Schedule 6. Thus, the issue presented is whether the importations are steel sheets

in their basic shape and form, coated in accordance with headnote 1, Part 2 of Schedule 6 (hereafter referred to as "headnote 1"), and as such, more specifically provided for in items 608.87 and 608.95 than in item 657.20.

It is to be observed that a like issue was involved in *W. R. Filbin & Co., Inc.* v. *United States*, 65 Cust. Ct. 194, C.D. 4077 (1970) (hereafter referred to as "*Filbin* I") where this court sustained the importer's protest and held that merchandise similar and in some cases identical to the merchandise in question here was properly classifiable under item 608.87 as steel sheet rather than under item 657.20 as "Other" articles of iron or steel. Thus, the present case is in effect a retrial of *Filbin* I.

II

We consider first the facts as established by the record.[1] At the outset, the parties stipulated (i) that the imported merchandise consisted of coils of cold rolled steel sheets not clad and not coated with metal except for the hot dipped galvanized material; and (ii) that the steel sheets were coated with enamel. Beyond that, the record showed that if the coils were unrolled, the coated metal sheets would be in the shape of a long rectangle, 3,000 to 10,000 feet in length, 22¾ to 44 inches in width and 0.015 to 0.0295 inch in thickness.

Prior to importation, the steel was coated on the topside with non-metallic enamel which produced plain colors, stripes, or simulated wood grain patterns. On the bottom or backside, the steel was coated with solid colors (i.e., a full coat with no pattern); or with washcoat (i.e., a pigmented material which is less than a full coat); or with clear coats of unpigmented materials. In some instances, the backside was not coated or painted. It is to be added that the present imports were coated for the same importer, by the same coater, and on the same equipment, as the material in *Filbin* I.

The enamel coatings were applied to the steel sheets by means of a continuous process. After several preliminary operations to prepare the steel for coating, a roll coater applied the basic coat. In some cases, a backside coating was also applied as part of the same operation. The steel then went through a heat setting operation to prepare the surface of the base coat so that it would be suitable for further enamel coats. Thereupon, the material was subject to a water cooling cycle. The steel then went through a second coating operation, where the pattern or stripe, if any, was applied. In the case of the wood grain pattern, a

[1] Plaintiffs called two witnesses, the secretary-treasurer of plaintiff Litho-Strip Corporation, the actual importer, and a management and engineering consultant, who had formerly been president of Litho-Strip. Defendant called two witnesses employed by the United States Steel Corporation (hereafter referred to as "U.S. Steel"), who testified as experts. Further, plaintiffs introduced eight exhibits, while defendant introduced six.

clear top coat was also applied at that stage together with (in some instances) a coating to the backside. After the sheets received the designated coatings, they went through another heat setting operation where the coatings were cured to the required hardness and fabrication specifications. The steel was then water quenched, and finally rewound in coil form.

The wood grain pattern—which was applied in the second coating operation—was obtained by means of a gravure cylinder that picked up and retained ink in the indentations in the cylinder.[2] The striped pattern was produced by transferring ink or enamel from a solid metal roll to a rubber roll which was cut to the width of the stripe and in turn applied to the sheet. In some cases, the stripe was applied in gravure fashion.

It is to be noted that the steel with the wood grain pattern had three coats applied; the cold rolled striped patterns, two coats; and the hot dipped galvanized striped pattern, one, two, or three coats.

At no time prior to the completion of the production cycle was the material, in its then present form and condition, suitable for any commercial use. For example, the material emerging from the first heat treating operation was in no condition to be utilized since it was not sufficiently cured and lacked the properties required for an end use. What is more, even after the coating operation was completed, the coiled sheets, in their condition as imported, were not commercially usable without further processing. Thus, the sheets had to be sheared, perforated, bent, formed and/or stamped before they were suitable for use in any product.

The coatings applied to the steel sheets were all described as "enamels" within the general usage in the paint industry. More particularly, the wood grain sheets were coated with an alkyd coating —an alkyd being a combination of an alcohol and an acid. The cold rolled striped sheets were coated with a polyvinyl chloride, while the hot dipped galvanized sheets were coated with a silicon alkyd. All the coatings were nonmetallic.

The purposes of the coatings were to provide corrosion protection to the underlying steel sheet and to enhance the appearance of the sheet. The improvement in appearance resulted from changing the dull dark color of cold rolled steel, or the silvery spangled appearance of galvanized, to more attractive colors.

In those instances where multiple coatings were applied there were advantages, in relation to appearance and corrosion protection, to

[2] The gravure cylinder was manufactured in the following way: First a pattern was produced either by an artist or by photographic means, and the pattern was then transferred by photographic means to the roll. Various coatings were applied to the roll and then removed in a controlled fashion. The roll was then etched so that there were small cells in the surface of the roll which conformed to the pattern which was put on the roll.

the multiple coats as distinguished from a single coating of the same thickness. In the first place, the variation in color that was achieved by the wood grain and striped patterns was generally more pleasing in appearance than solid color materials. Secondly, the additional coats provided greater corrosion protection. In the latter connection, any coating applied to metal and heat treated in the manner that was done here, was susceptible to pinholes. These pinholes provided focal points for corrosion. Therefore, the application of a second coat, even though it had pinholes, acted like putting two screens together, where the wire in one screen covers the holes in the other. For this reason, several thin coats provided better corrosion protection than one thick coat of equivalent thickness. Generally speaking, also, the thicker the coating the better the corrosion protection.[3]

After completion of the coating operation described above, no further processing occurred. At the time of importation, there was no other coating on the material, except the galvanized coating on the galvanized steel. Also at the time of importation, none of the imported material had been cut, pressed or stamped to non-rectangular shape. And except for the hot dipped galvanized material—which was neither tin or terne coated—none of the steel was either coated or plated with any metal. Nor was any of the material alloy steel or clad.

In its imported condition, either in coiled form, or flat as a long rectangle, the imported material (as set out previously) had no commercial use without further processing. It was, however, susceptible to being sheared, perforated, bent, formed and/or stamped, or all these operations, into its final end product. It was also susceptible to being welded through generally accepted techniques.

With such additional processing, the imported merchandise was suitable for a wide variety of end use applications. Thus, the imported merchandise in question here was ultimately used for automotive parts, shelving, building panels and accessories, baseboard heaters, and picture frames. Further, if the steel itself was suitable, the imported coated sheets were also suitable for the manufacture of acoustical tile and suspension systems, building panels, gutters, downspouts, closures, buttons, curtain rods, metal baseboards, oil filters, picture frames, stampings, dashboards, appliances, metal furniture, mobile homes, signs, serving trays, decorative tiling, advertising specialties, lock seam tubing, doors, ballast caps, lighting fixtures, ammunition cases, shelving, etc.

In some cases, the type of steel used and the coating applied were custom-made in accordance with the customer's specifications for a

[3] The weight of the evidence established that at the time of the importations, there were in regular commercial use, coatings which equalled or surpassed the formability of the underlying steel. See e.g., plaintiffs' exhibit 8.

particular end use; frequently, however, the same material and coating were used for a large number of customers. On this latter aspect, about eleven types of coating were available and the actual type utilized depended on the end use of the product. For instance, an alkyd finish is a low cost coating material which is quite acid, alkyne resistant, hard and non-ductile. Hence, it is not suitable for products such as closures, stampings and lock seam tubing which are produced by severe forming operations. On the other hand, it is suitable and used for such products as appliances, baseboard heating units, shelving, etc.

Silicon alkyd coating has the same limitations as alkyd with the exception that it can be used for outdoor exposure. However, since it costs much more than alkyd coating, it was recommended only for outdoor use.

Polyvinyl coating is suitable for products which require severe forming, but is not particularly suitable for outdoor exposure applications. By contrast, polyvinyl chloride coating is suitable for all the products previously mentioned, though its outdoor exposure properties are not as good as those of silicon alkyd.

On a related phase, those importations which were coated with silicon alkyd were guaranteed for a period of three years against weathering, cracking, peeling or fading. Also in a few cases, guarantees were custom written to meet a particular situation or a particular use that was going to be made of the coated steel; otherwise outdoor use was the only end use that was guaranteed. Additionally, there were product specification guarantees regarding such things as color, film thickness, etc.

Beyond these considerations, the record further showed that during the period in issue, U.S. Steel sold coated steel sheets similar to the solid and wood grain coated sheets involved here but did not handle anything comparable to the imported striped sheets. Thus it sold large amounts of prepainted (coated) hot dipped galvanized sheets to: the preengineering building market; fluorescent lighting fixture manufacturers; appliance manufacturers; swimming pool manufacturers; etc. The coated sheets handled by U.S. Steel were sold only on a custom-made basis in accordance with customer specifications. These specifications involved the degree of corrosion resistance; the thickness of the coating on each side of the sheet; gloss and color requirements; degree of reflectivity in lighting fixture applications; and degree of resistance to foodstains when the sheets were used for freezer or refrigerators linings.

Since coated steel sheets were only sold by U.S. Steel on a custom-made basis, its prices for such sheets were not determined until the customer's specifications were submitted. Further, the sheets were sold by U.S. Steel under several types of written guarantees that related directly to the end use of the product. By contrast, U.S. Steel

published a price list for unpainted steel and sold such steel without any written guarantee.

In many instances, coated sheets of U.S. Steel that were made to one manufacturer's specifications were not suitable for use by another manufacturer. As an example, a sheet that was coated to a specification for a building panel was not necessarily suitable for the inside of a freezer or refrigerator liner.

Additionally, one of the government witnesses, who was familiar with the coating operations used in producing the striped and wood grain patterns here in issue, testified that these operations were much more sophisticated than the conventional coil coating operation. Further, according to this witness, the process used to apply the wood grain pattern was a form of lithography, while the striped pattern was applied by a specialized printing operation.

Finally, reference in the record was made to the American Iron and Steel Institute, whose primary function is to establish standards for steel products. That organization publishes a *Steel Products Manual* which is universally accepted in the steel industry and contains standards for carbon sheet steel, either in the form of coils or cut to size. The Manual covers all standard sheet products including cold rolled and hot dipped galvanized steel that has not been patterned or imprinted. However, it does not include prepainted sheets of steel.

III

Against this background, it must be concluded that the underlying steel sheets met all the criteria applicable to classification of cold rolled steel sheets under item 608.87 and of galvanized sheets under item 608.95. For one thing, as required by headnote 3(g), Subpart B, Part 2 of Schedule 6, the sheets were under 0.1875 inch in thickness and over 12 inches in width;[4] also the sheets were more than 0.0142 inch in thickness and thus were not "black plate" as defined in headnote 3(g)(i) of Subpart B, Part 2 of Schedule 6.[5] The sheets were not cut, pressed or stamped into non-rectangular shape. None of the material was clad, nor was it alloy steel. The cold rolled sheets had not been coated or plated with any metal, while the hot dipped galvanized sheets were neither tin coated nor terne coated.[6]

As we have seen, the further statutory criteria for determining whether a coated steel sheet is entitled to classification under Part 2

[4] Headnote 3(g), Subpart B, Part 2, Schedule 6 defines "Sheets" as: "[F]lat rolled products whether or not corrugated or crimped, in coils or cut to length, under 0.1875 inch in thickness and over 12 inches in width."

[5] Headnote 3(g)(i), Subpart B, Part 2, Schedule 6 states that "the term *'black plate'* refers to cold rolled steel sheets, not coated, under 0.0142 inch in thickness."

[6] Items 608.92 and 608.93 cover tin coated and terne coated sheets, respectively. The term "terne coated sheets" refers to steel sheets coated with terne metal (a lead-tin alloy)." See headnote 3(g)(iii), Subpart B, Part 2, Schedule 6.

of Schedule 6 is manifested by headnote 1 thereof, which (as previously noted) provides in part as follows:

> * * * Unless the context requires otherwise, the provisions of this part apply to the products described * * * whether or not such products have been subjected to treatments to improve the properties or appearance of the metals or to protect them against rusting, corrosion or other deterioration. These treatments include * * * coating with enamel, paint, lacquer or other nonmetallic substances; * * *.

The parties have stipulated that the imported steel sheets had, at the time of importation, been coated with enamel, and the evidence established that except for the galvanized coating on the galvanized steel, the imported sheets contained no coating other than enamel coating. The evidence further established that the coatings were applied to protect against corrosion and to improve the appearance of the imported sheets. In short, the evidence established that all of the statutory criteria for the enamel coatings, provided by the applicable headnote, were fully met in the present case.

With these considerations in mind, it is apparent that the essential issue here has previously been disposed of by this court in *Filbin* I, *supra*, 65 Cust. Ct. 194. That case involved the proper tariff classification of coils of cold rolled steel sheet coated with alkyd on both sides, and simulating the appearance of wood on one side. As in the present case, the government in *Filbin* I classified the imports under item 657.20 as "Other" articles of iron or steel, while plaintiff claimed the merchandise was a steel sheet coated with enamel, and pursuant to headnote 1, properly classifiable under item 608.87. The court sustained the protest holding that in light of headnote 1, plaintiff had made a prima facie case for classification of the imported merchandise as a steel sheet within the purview of item 608.87. In reaching this result, the court relied heavily on *United States* v. *Globe Shipping Co., Inc.*, 31 CCPA 95, C.A.D. 254 (1943) which arose under the Tariff Act of 1930. In *Globe*, the imported merchandise was described on the invoice as "Cold rolled Steel Sheets lacquered one side, one colour." The appellate court affirmed this court's holding that such merchandise was properly dutiable as steel sheets under paragraph 304 rather than as manufactures of metal not specially provided for under paragraph 397. The gist of the government's contention in *Globe* was that the sheets "have been advanced in condition by lacquering to such an extent that they are manufactures of metal, rather than steel sheets." As to that contention, the court commented (31 CCPA at 96–97):

> * * * The fair purport of the testimony of importer's witness, Geisler, we think, is that * * * [the sheets] are used in the

> manufacture of various articles * * *. We think, however, that this is a case in which the sample in evidence is a potent witness, and it appears clear to us that various types of articles can be stamped or manufactured from the sheets. *Upon the record, taken as a whole, we think it should be held that the sheets in their condition as imported had not been so advanced in manufacture that they had become dedicated to any single use, or class of uses, which is one of the tests applied in determining whether an article contemplated by paragraph 397, supra, is "partly or wholly manufactured."* [Emphasis added.]

Not only is the rationale of *Globe* applicable here, this court is in entire agreement with the following apt comments of Judge Newman with respect thereto in *Filbin* I (65 Cust. Ct. at 201):

> Although here, the coating is on both sides of the sheet and gives the metal a wood grain appearance on one side, nevertheless *Globe* is persuasive in finding that the instant merchandise has not been advanced beyond the form of sheets. Notwithstanding the alkyd coating, the instant merchandise has retained its character and use as steel sheets and still remains a material for the making of various articles, such as automotive trim, ashtrays, shelving, air conditioning covers, and many others. Cf. *J. C. De Jong & Co., Inc.* v. *United States*, 62 Cust. Ct. 605, C.D. 3832 (1969). The fact that the merchandise may be limited in use to the extent of decorators' or designers' color preferences, does not alter its nature as a mere material available for a variety of end uses.
>
> In sum, coupling the rationale of *Globe* and the plain meaning of headnote 1, part 2, schedule 6, we find under all of the facts and circumstances herein that the imported merchandise is a basic shape or form and is classifiable as steel sheets within the purview of item 608.87, TSUS.

It is to be noted that much of the material involved in the present case was the same plain alkyd coated, simulated wood grain, cold rolled steel involved in *Filbin* I. Further, the present material involved coatings applied as either stripes or plain colors. These, it is apparent, are covered by an *a fortiori* application of the *Filbin* I holding. It is quite true that in the present case the coatings were silicon alkyd and polyvinyl chloride, in addition to the plain alkyd coating involved in *Filbin* I. But all these coatings were properly described as "enamels" as that term was generally used in the industry and as stipulated by the parties. Thus all fall within headnote 1, which allows "coating with enamel" as a specifically recognized process.

Next, some of the imported coils in issue here had galvanized steel as the substrate instead of cold rolled steel. However, headnote 1 is equally applicable to galvanized steel, as it is applicable to the cold rolled steel involved in *Filbin* I and in the present case.

Thus, while there are minor differences between some of the imports here involved and those involved in *Filbin* I, none of those differences are such as to call for a different result.

Moreover, the record in the present case demonstrated that as in *Filbin* I, "the instant merchandise has retained its character and use as steel sheets and still remains a material for the making of various articles, * * *." Thus here the imported material only acquired commercial utility after it was sheared, perforated, bent, formed and/or stamped into its final end product. As previously noted, the imported material here was, in fact, ultimately manufactured into automotive parts, shelving, building panels and accessories, baseboard heaters, and picture frames. Beyond that, as discussed before, if the steel itself was suitable, the imported coated sheets were also suitable for the manufacture of a wide variety of diverse products.

In short, the evidence in the present case established that as in *Filbin* I, the imported merchandise "has retained its character and use as steel sheets and still remains a material for the making of various articles, * * *."

Defendant argues, however, that the imported products, "[d]ue to their unique finish and the unique process utilized to apply to unique finish, were properly classified as an article of iron or steel." (Br. p. 18).[7] But uniqueness is not the test for determining whether an item is a sheet of iron or steel in its basic shape or form as distinguished from a metal product; rather the test was set forth by this court in *Burn Strauss, Inc.* v. *United States*, 62 Cust. Ct. 664, 668, C.D. 3845, 305 F. Supp. 14, 18 (1969), as follows:

> In our opinion, the provisions in subpart B, part 2, schedule 6 for sheets of iron or steel were intended to cover *material for manufacturing articles*, as distinct from *finished articles of manufacture ready for use*. This conclusion is fully supported by the cases. [Emphasis added.]

In *Burn Strauss* the court held that an imported article was no longer a steel sheet, but was in fact a finished article of manufacture, ready for use, where steel sheet had been cut to the size required for use as a wall for a wading pool, hemmed along the edges for horizontal stability and as a precaution against accidental cutting by the ultimate user, corrugated to give vertical rigidity as a wading pool wall, stamped with dimpled holes along both ends to allow joining into a wading pool, and nothing remained to be done to make a wading pool except to assemble it, together with a plastic liner.

In reaching this conclusion, the court in *Burn Strauss* relied on a number of cases, including *United States* v. *Frank*, 15 Ct. Cust. Appls.

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[7] To this contention, defendant adds: "There is primarily one determination that must be made in this action. Are these products—which started out in Canada as unfinished bare pieces of sheet metal which had at least two coats of paint or enamel applied, and in most instances four coats of paint or enamel (i.e., the woodgrain pattern), generally, by a sophisticated process—so far advanced as to preclude them from classification under any item other than 657.20, *i.e.*, articles of iron or steel?" (Br. p. 18).

97, T.D. 42184 (1927) and *Stengel* v. *United States*, 2 Ct. Cust. Appls. 137, T.D. 31663 (1911). In *Frank* the court held that paragraph 304 of the Tariff Act of 1922—which covered sheets and plates—"was intended to refer to materials for further manufacturing processes and not to completely manufactured products like the steel piling involved here." 15 Ct. Cust. Appls. at 102. In *Stengel*, zinc in the form and shape of, and ready for use in its imported condition as, tiles or tiling for walls and ceilings, was held to be classifiable under the provision in the Tariff Act of 1909 for articles of zinc rather than under the provision for zinc in sheets. The latter provision was held to cover "sheets of zinc which retained their form and identity as such and were intended to be used as material for manufacturing articles as distinct from articles of manufacture ready for use." 2 Ct. Cust. Appls. at 138. The court emphasized (*Id.* at 139) that "[t]he articles here in question * * * are articles upon which no further work is necessary to be done to fit them for a specific definite use."

Also worthy of note are the following additional comments in *Burn Strauss* (62 Cust. Ct. at 669):

> * * * [I]t has been held that where steel sheets have been advanced in condition for particular commercial uses, they are not classifiable as steel sheets, but as articles of steel not specially provided for. *Braun-Steeple Co. et al.* v. *United States*, 18 CCPA 437, T.D. 44683 (1931) (steel sheets stamped with fancy designs for use in radiator covers, panels in the ends of metal beds, lanterns, etc.); *R. W. Smith, a/c Goodson Steel Corp.* v. *United States*, 60 Cust. Ct. 535, C.D. 3452, 284 F. Supp. 777 (1968) (metal lath processed from steel sheets by slitting, pressing and expanding operations, used mainly in the construction industry as a plaster base).

Finally, the court in *Burn Strauss* distinguished *United States* v. *Globe Shipping Co., Inc.*, *supra*, 31 CCPA 95 on the following basis (62 Cust. Ct. at 671):

> * * * While the process of lacquering the sheets in *Globe* did not remove them from their status as a *material* from which "various types of articles can be stamped or manufactured," we are clear that the articles in the present case were advanced in condition for a particular commercial use, and were not "used in the manufacture of various articles." * * * [Emphasis in original.]

Under all of these cases, taken together, classification as a metal product was sustained only where the sheet of metal was processed beyond the basic sheet form produced in the steel mill. For example, in *Burn Strauss, Inc.* v. *United States*, *supra*, such a steel sheet was, prior to importation, cut, hemmed, punched and dimpled. In *Braun-Steeple Co.* v. *United States*, *supra*, the sheet was stamped with perforations forming various fancy designs and thus advanced in condi-

tion for particular commercial uses.[8] On the other hand, in *United States* v. *Globe Shipping Co., supra*, the steel was in its basic sheet form and classification as a steel sheet was allowed, even though coated and even though there was no statutory provision granting specific recognition to such coating, as in the case here.

On that line of distinction, the instant steel was not properly classified under item 657.20 as an article of iron or steel. All of the instant imported steel was still in the form of sheet steel in coils. Unrolled it was in the form of a long rectangle, with a length of between 3,000 and 10,000 feet and a width of between 22¾ to 44 inches. That is the form and shape in which the steel had been manufactured in the steel mill. To be commercially useful, it had to be subjected to the further manufacturing processes of shearing, perforating, bending, forming and/or stamping. And after such processing, enamel coated steel of this type was used for a host of manufactured articles. The short of the matter is that the evidence established beyond doubt that the imported enamel coated steel is a material for manufacturing articles.

Defendant contends, however, that the imported steel sheet was imprinted with enamel through a sophisticated printing process and that the sheet therefore was so far advanced as to be dedicated toward a class of uses and hence classifiable as an article of iron or steel. This argument is quite without merit.

The fact, about which there is no question, is that a metal cylinder picks up the correct amount of enamel and deposits it on a rubber roller which transfers it to the steel. The striped pattern is produced by cutting the roller. The wood grain is produced by applying a second coat of the same material but a different color, selectively, on top of the first coat after the first coat has been partially heat set but before the final baking process sets all coats.

If defendant is urging that this process cannot properly be called coating with enamel, such an argument would be in direct contraven-

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[8] In *Braun-Steeple*, it appears that as imported the perforated sheet was ready for immediate use needing only to be cut to shape and form. 18 CCPA at 438. It is to be noted that the court in *Braun-Steeple* affirmed the decision of this court in *Frank P. Dow Co., Inc.* v. *United States*, 58 Treas. Dec. 1007, Abstract 13317 (1930). In *Dow*, the court's opinion stated merely that "[o]n the authority of Braun *v.* United States (T.D. 44191) the protest was overruled." In *Braun*, 58 Treas. Dec. 128, T.D. 44191 (1930), the case thus referred to in *Dow*, the court held that imported perforated sheets were properly classified as manufactures of steel rather than as steel not specially provided for. In reaching this result, the court stated that the imported material "would scarcely be deemed to be merely steel material, particularly as it is ready for immediate use as imported, requiring only to be cut to proper size." 58 Treas. Dec. at 129. The court in *Braun* further stated that such cutting did not constitute a manufacturing process but at best merely served to fit or adjust the perforated article to its ultimate and destined use as part of a completed whole. The court then concluded that "[s]trictly speaking, these perforated sheets are not to be manufactured into different articles or shapes, but are merely to be cut so as to render them susceptible of immediate use as part of a given article. As imported, they require nothing to be done in the way of further fabrication or manufacture to fit them for their ultimate use save cutting to size. * * *." 58 Treas. Dec. at 130. See also *J. G. Brown* v. *United States*, 55 Treas. Dec. 268, T.D. 43209 (1929).

tion of the stipulation of its trial counsel made in open court at the commencement of the trial that the metal sheet was coated with enamel (Tr. 10–11). In view of this stipulation, there is no further issue on this point, since "coating with enamel" is a process recognized by headnote 1.

But even assuming arguendo that the process used on the imported steel was not coating, Part 2 of Schedule 6 would still be applicable. For headnote 1 refers to metals in their basic shape or form "by whatever process made * * * and whether or not such products have been subjected to *treatments* to improve the properties or appearance of the metals or to protect them against rusting, corrosion or other deterioration." [Emphasis added.] And on this score, the term "treatment" is broad enough to encompass any form of process for the designated purpose. Thus, "treatment" is defined in *Webster's Third New International Dictionary, Unabridged* (1966 ed.) as:

> 1: the action or manner of treating: as * * * c: subjection of something to the action of an agent *or process* * * * [Emphasis added.]

Additionally, even before the enactment of headnote 1, it had been held under the Tariff Act of 1930 that the process by which the enamel was applied was irrelevant. Thus in the *Globe* case, *supra*, the court stated (31 CCPA at 97):

> We do not regard the process of applying the lacquer as being of any particular importance upon the issue here involved. Whatever it may have been, the resulting product was a steel sheet coated on one side. * * *

Defendant further argues that the customary method of selling coated steel sheets is to customer specification and that in some cases the type of enamel the customer orders restricts the formability of the steel, which in turn allegedly limits the end product to "a class of uses." The short answer to this contention is that even if "coating with enamel" should restrict formability, that is irrelevant to considerations of classification since, by virtue of headnote 1, "coating with enamel" is a statutorily recognized process to which sheet steel may be subjected without losing the right to be classified as a basic shape or form of steel. In this circumstance, no amount of analysis, based upon prior statutes which had no comparable headnote, permits the ignoring of this plain Congressional mandate that enamel coated steel sheet is to be classified under Part 2 of Schedule 6.

Nor, for the following reasons, does the record support the contention of defendant in this regard. The evidence showed that the imported sheets involved three grades of steel: (1) cold rolled commercial quality; (2) cold rolled drawing quality aluminum killed;

and (3) hot dipped galvanized. When outdoor use was intended, hot dipped galvanized was normally selected. However, if the increased corrosion resistance provided by the hot dipped galvanized was not required in the end product use, cold rolled steel was ordinarily selected. The evidence also showed that cold rolled commercial quality steel has less ability to withstand forming—less fabricability—than cold rolled drawing quality aluminum killed steel which is more expensive. Accordingly, unless the contemplated end use required the superior quality of cold rolled drawing quality aluminum killed steel, it was not ordinarily selected. Thus, as a result of the selection of the grade or quality of the steel, the end user was restricted to some extent in the number of products that could be manufactured.

This is an inherent and essential characteristic applicable to all basic shapes and forms of steel. The same characteristic is equally applicable to enamel coated steel. In this latter respect, the imported steel was coated with three types of enamel: alkyd; silicon alkyd; and polyvinyl chloride. These three types of coating were out of an available selection of some eleven types of coating. And, as previously pointed out, one or another of these kinds of coating will withstand any draw or formability that the imported steel will withstand. See note 3, *supra*. There is thus nothing inherent about the coating of steel which restricts the fabricability of the metal. Nor is there any difference between the ultimate user selecting various grades of steel for various end uses and selecting various grades of coating for end uses. This was emphasized by the testimony of one of plaintiffs' witnesses to the effect that a customer normally selects not only the least expensive grade of steel commensurate with the end use of the product, but also the least expensive coating.

Defendant next argues that prepainted steel sheets do not constitute a basic shape or form of steel because they are not listed in the American Iron and Steel Institute's *Steel Products Manual* which contains the quality standards for all standard sheet products. The difficulty with this contention is that headnote 1 contains specific provisions which make clear that for tariff purposes a steel sheet coated with enamel is a basic shape or form. See also *Filbin* I, *supra; United States* v. *Globe Shipping Co., Inc., supra*.

Finally, defendant points out that headnote 1 provides that "[*u*]*nless the context requires otherwise*, the provisions of this part apply to the products described * * *." [Emphasis added.] According to defendant, in light of this language and the facts heretofore presented, the "context" requires that the imported merchandise be excluded from the scope of Part 2, Schedule 6 as an article of steel in its basic shape or form. That argument, however, misconceives the purpose of the quoted language which manifestly is to provide for situations where

the textual provisions of Part 2, Schedule 6 are inconsistent with the headnote 1 provisions.

In sum, plaintiffs' claim is sustained and it is held that the importations are properly classifiable as steel sheets, with the cold rolled steel coils dutiable under item 608.87 and the galvanized steel coils dutiable under item 608.95. Judgment will be entered accordingly.

(C.D. 4555)

HANCOCK GROSS, INC. *v.* UNITED STATES

Faucet washers—Gaskets

Faucet washers, of rubber or plastics, designed to be attached to the end of a faucet stem or spindle primarily to seal off the flow of water when the valve is in the shut-off position are, as plaintiff claims, classifiable as gaskets, of rubber or plastics, under TSUS item 773.25.

The TSUS classification, gaskets, of rubber or plastics, is concededly relatively more specific than the customs classification as articles of rubber or plastics, not specially provided for, under TSUS item 774.60, and by reason of general headnote 10(ij) entitled to priority over defendant's claimed alternative classification as parts of hand-operated and check taps, cocks, valves and similar devices used to control the flow of liquids, gases, or solids, under TSUS item 680.22.

Court No. 69/9241

Port of Philadelphia

[Judgment for plaintiff.]

(Decided August 21, 1974)

Allerton deC. Tompkins for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Herbert P. Larsen* and *Andrew P. Vance*, trial attorneys), for the defendant.

LANDIS, Judge: This case involves tariff classification, under the Tariff Schedules of the United States (TSUS), of merchandise described in the record as faucet washers and imported from Japan in 1968.

Customs classified the washers under TSUS item 774.60 as articles, not specially provided for, of rubber or plastics, dutiable at 15 per centum ad valorem. Plaintiff challenges the customs classification in

an allegation that the washers are more properly classifiable under TSUS item 773.25 as gaskets, of rubber or plastics, dutiable at only 9 per centum ad valorem. Defendant denies that the washers are gaskets and, in an affirmative defense, alternatively alleges that if the washers were not properly assessed under TSUS item 774.60, then they would be correctly classifiable under TSUS item 680.22 as parts of hand-operated and check taps, cocks, valves and similar devices used to control the flow of liquids, gases, or solids, dutiable at 16 per centum ad valorem.

In open court, on the day of trial, counsel for defendant stated that "if the * * * [washers are] shown to be gaskets as claimed by plaintiff under item 773.25, on the ground of relative specificity that claim would prevail against both the assigned classification, which is articles of rubber or plastics, not specially provided for, item 774.60, or by virtue of the general headnote 10(ij)[1] of the Tariff Schedules against the Government's alternative claim as parts of taps, cocks, valves, et cetera [item 680.22]." Much of the discussion in the briefs relates to the merit or lack of merit of defendant's alternative claim but, as defendant has conceded in open court, the alternative claim is irrelevant if plaintiff's claim is well taken under TSUS item 773.25.

This brings me to consideration of the issue shaped by the pleadings and argument in this case, viz: whether the imported washers are gaskets in the tariff sense that "gaskets", of rubber or plastics, are provided for in item 773.25.

In determining the meaning of tariff terms, it is established that the tariff law is drawn in the language of commerce, which is presumptively the same as the common meaning, and that the law is not drawn in the terms of science, *C. J. Tower & Sons* v. *United States*, 41 CCPA 195, C.A.D. 550 (1954); it is further established that the common meaning of a tariff term is not a question of fact, but a question of law, *United States* v. *O. Brager-Larsen*, 36 CCPA 1, C.A.D. 388 (1948), and that the court is not bound by testimony with respect to the common meaning of a tariff term, as its effect is advisory only, and the court will ordinarily place chief reliance upon court decisions and definitions of dictionaries and other lexicographical authorities, *United States* v. *Mercantil Distribuidora et al.*, 43 CCPA 111, C.A.D. 617 (1956).

Both sides agree that the imported washers of various sizes are wholly or in chief value of rubber or plastics; some have two flat sur-

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[1] TSUS, General Headnotes and Rules of Interpretation, provides as follows:

10. General Interpretative Rules. For the purposes of these schedules—

* * * * * * *

(ij) a provision for "parts" of an article covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision for such part.

faces (exhibits 1, 2, 3); some have one flat surface and one slightly beveled surface (exhibit 4); they are all circular disks with a hole in the middle, and all are chiefly used with faucets that have a turn stem or spindle to which the washer is attached at the seat end, usually by a screw in a manner that the washer moves with the turn of the stem or spindle, so that when the stem or spindle is turned "open" water flows and when the stem or spindle is turned "closed" the washer is pressed against the faucet seat and the flow of water and leakage is stopped.

The witnesses[2] also substantially agree that the imported washers are dealt with in the plumbing trade as "washers"; that the washers are chiefly used by the plumbing trade as pressure seals on faucets, in the manner alluded to above, primarily to assist in shutting off the flow of water and leakage across a joint; that pressure seals include such as are called "packing", and such as are called "gaskets"; that some pressure seals which are bought and sold as washers are in fact gaskets; and that the definition read into the record by defendant's counsel, namely, "a deformable material clamped between essentially stationary faces to prevent the passage of matter through an opening or joint," acceptably defines a "gasket".

Plaintiff, in argument anticipating defendant's contention that gaskets are limited to seals between stationary surfaces, is of the view that such contention must be rejected on authority of *Arthur J. Fritz & Co. et al.* v. *United States*, 63 Cust. ct. 484, C.D. 3940 (1969), affirmed on appeal, *Id* v. *Id*, 59 CCPA 46, CA.D. 1036 (1971). The *Fritz* case sustained the customs classification of rubber rings, used to seal a joining of pipes and couplings against leakage, as gaskets, of rubber or plastics, under TSUS item 773.25, rather than as parts of sprayers suitable for agricultural or horticultural use.

In my opinion, the facts in the *Fritz* case were quite similar to those in the case here for decision. Referring to the court of appeals decision in *Fritz*, I note the following discussion (59 CCPA at pages 48–49):

> The imported articles were invoiced as sealing rings and are used in irrigation equipment. A ring is positioned at the junction of a pipe and a coupling, and when water is forced through the junction, the water pressure expands the ring so as to effect a seal which prevents seepage or drainage of water at that point. It is undisputed that in this capacity the sealing rings function as gaskets. When the flow of water and pressure is terminated, the ring relaxes and permits water drainage from the pipes. Irrigation pipes are moved frequently in the field, and the residual water is a load which the testimony at trial indicates is so great that movement of the pipe is virtually impossible. The automatic

[2] One witness testified for plaintiff. Two witnesses testified for defendant. Defendant also introduced a number of illustrative washers (exhibits A, B, D, E).

drainage allowed by the imported sealing rings overcomes this problem. Because the rings allow this drainage to occur, the rings are appellants [plaintiffs below] urge, more than gaskets.

The Customs Court referred to several dictionary definitions of gasket which read:

> Plaited hemp or tallowed rope for packing pistons, making pipe joints, etc.; hence, packing for the same purpose made of rubber, asbestos, metal, or other suitable material, usually in the form of sheets or rings. [Webster's New International Dictionary of the English Language, Second Edition (1958).]
>
> (1) A thin, flat, annular packing piece of india-rubber, leather, or sheet metal, placed between two flat surfaces, as a manhole-plate and a boiler-head, to make their joint water-tight. (2) A packing of hemp or other fibrous stuff, or of lead, between the bell of one pipe and the spigot or male end of another. [Funk & Wagnalls New "Standard" Dictionary of the English Language (1956).]

Structurally, the imported articles are, as described by name, rings, and are made of rubber. In structure, and function as well, the merchandise conforms to that commonly understood to be gaskets. The difficulty in distinguishing the rings from gaskets is further apparent from the testimony of the plaintiff's witness at trial on cross-examination, which was, in pertinent part, as follows:

> Q. Mr. Lake, will you further describe how the draining takes place in this operation?
> A. The gasket is not a tight fit on the pipe or the coupling until it is expanded by the internal pressure [of the water].
> Q. In use it is used as a gasket, it seals?
> A. It seals, yes, sir.
> Q. And it ceases being a gasket, if I understand, according to what you are saying, when it's not in use? In other words, when it drains?
>
> * * * * * * *
>
> A. How could it cease to be?
> Q. It's still a gasket?
> A. Yes.
> Q. It would be a gasket if you carried it around in your hand before you put it on?
>
> * * * * * * *
>
> A. You pick it up, you can call it a gasket or sealing ring.
> Q. Essentially, this is a loose-fitting gasket specially designed for this operation?
> A. You could call it that, or you could call it packing.

The conclusion of the Customs Court was that in use, the rings functioned as gaskets. Appellants argue that the draining operation is also a use and because it is capable of the dichotomous function of sealing and draining, the rings more resemble valves

than gaskets. We do not think the analogy is well-taken. In the case of the instant rings, they are made loose-fitting to accomplish a merely incidental purpose; their structural design is geared to what we are constrained to hold to be the primary purpose—sealing.

In *Fritz*, appellants (plaintiffs below), argued without success that although the Customs Court had held that in use the rings functioned as gaskets, the draining operation was also a use, and because of the dichotomous functions of sealing and draining, the rings more resembled valves than gaskets. Here defendant has argued that the imported faucet washers are chiefly used as parts of valves, faucets, etc., which in turn are used to control the flow of liquids, and that they cannot be considered to be gaskets which are to provide a static seal between two stationary surfaces. However, defendant's argument that the function of the imported faucet washers is not that of a static seal between stationary surfaces is inconsistent with testimony elicited from its own witness, Mr. O'Mahoney, who testified contrariwise as follows:

> Q. I show you Plaintiff's Exhibits 1, 2, 3 and 4 and I ask you if you recognize these items, based upon your experience and your familiarity with the line of plumbing goods?—A. They are faucet washers.
>
> * * * * * * *
>
> Q. What would the chief uses of faucet washers be?—A. Faucet washers are used as a shut-off in an operating valve such as a kitchen faucet, a basin faucet, or a bath faucet, and shut-off valves, supply valves.
>
> Q. About how many faucet washers does your company manufacture or sell in a given year?—A. I don't remember the figures. I would say between six and eight million combined.
>
> Q. Can you approximate how many of these would be used in applications such as those you have expressed a first-hand familiarity with?—A. All of them; 100 percent.
>
> Q. Then is the only use that you know of for such faucet washers in connection with faucets and appliances such as you have previously described?—A. Yes, sir.

Defendant's argument is also inconsistent with testimony of its witness Mr. Curtin who, when cross-examined about his opinion that faucet washers are an extension of the stem or spindle that controls the flow of the water, testified as follows:

> Q. The purpose of the washer is that when it gets all the way down it will stop the flow of the water, is that correct?—A. Provides a seating surface for the stem so that you don't have metal to metal, yes, sir.
>
> Q. It's to stop the flow of water, is that correct?—A. Yes, sir.
>
> Q. That's the primary function of the washer?—A. Yes, sir.
>
> Q. That would be the primary function of washers like Ex-

hibits 1, 2, 3, 4, and D, according to your experience?—A. Yes, sir.

Q. Now, when the faucet or valve is in a closed position are the two faces essentially stationary, when in a closed position?—A. The washer and the seat, yes, sir, when they are fully closed.

Q. What's your answer?—A. Yes, sir.

However, aside from the unconvincing character of defendant's evidence to support its contentions, assuming as in *Fritz*, that the imported faucet washers performed the function of sealing (which is certainly supported by the evidence) and the dichotomous function of acting as a part of the stem or spindle in a faucet, the latter's purpose concededly being to control the flow of liquids, it cannot be said that the washers more nearly resemble parts of valves than gaskets. As the court of appeals observed in *Fritz, supra*:

> * * * In structure, and function as well, the merchandise conforms to that commonly understood to be gaskets. * * *
>
> * * * * * * *
>
> * * * We do not think the analogy [of the imported rings to valves] is well-taken. In the case of the instant rings, they are made loose-fitting to accomplish a merely incidental purpose; their structural design is geared to what we are constrained to hold to be the primary purpose—sealing.

The rings in *Fritz* had been modified and made loose fitting to accomplish another purpose—drainage. This was held by the court, however, to be incidental and not sufficient to alter the primary purpose—sealing. In the case before us, the evidence is even stronger for plaintiff-importer. There is no evidence whatever of any modification in the structure or design of the imported merchandise in any respect to detract from its function in acting as a seal.

In addition to these observations which I consider sufficient to dispose of this case in plaintiff's favor, I note that defendant argues that in common meaning "gaskts" are commonly accepted and defined as articles "whose function is to provide a stationary seal between two stationary surfaces." This, however, is materially different from the definition defendant read into the record, which defined "gaskets" as "deformable material clamped between *essentially* stationary faces" (emphasis added). I, for one, am not certain what constitutes "essentially stationary" surfaces and there is, in this record, no adequate proof of what it means. If it means surfaces that are completely stationary with no movement in the joint sealed by the gasket, why say "essentially" and not just "stationary" as edited by defendant.[3] The primary function of faucet washers is to seal the flow of water when the valve

[3]The word "essentially" is usually employed to modify terms intended to be close approximations. Cf. *Janzen* v. *Phillips*, 437 P. 2d 189, 191–192 (1968).

is shut off. Faucet washers, in my opinion, plausibly perform that function between two faces or surfaces that are essentially stationary.

For the reasons discussed herein plaintiff's claim under TSUS item 773.25 is sustained.

Judgment will enter accordingly.

(C.D. 4556)

STYLO MATCHMAKERS INTERNATIONAL, INC. *v.* UNITED STATES

Injection molded golf shoes

WEIGHT OF EVIDENCE—LEGISLATIVE HISTORY—RULE OF *Ejusdem Generis*

A polyvinyl chloride injection molded (one continuous piece of material) guaranteed waterproof golf shoe exported from England was classified as "other footwear" under TSUS item 700.53. The plaintiff sought to have it classified as "other footwear" under item 700.55. The most persuasive testimony at the trial was that the import was considered a golf shoe worn for protection against wet weather. A comparison of the language of the two competing tariff items indicated a policy of containment of "other footwear" which is "waterproof" in item 700.53, and containment of "other footwear" which is "non-waterproof" in item 700.55. A review of the legislative history reconciled any apparent conflict between the two competing tariff items and indicated support for the policy of the respective containments. The application of the *ejusdem generis* (things of the same kind) rule to the exemplars listed in item 700.53 and the imported merchandise also supported the finding of the district director.

Held: Where the weight of the evidence, the legislative history and the rule of *ejusdem generis* place the imported merchandise in the class of "other footwear" which is waterproof, "designed to be worn . . . in lieu of, other footwear as a protection against water," said merchandise is properly classified under TSUS item 700.53.

Court No. 72-10-02117

Port of Boston

[Judgment for defendant.]

(Decided August 27, 1974)

Barnes, Richardson & Colburn (*Joseph Schwartz* and *Irving Levine* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Frank J. Desiderio*, trial attorney), for the defendant.

Lamb & Lerch (*David A. Golden*), for amicus curiae.

RICHARDSON, Judge: The merchandise in this action consists of polyvinyl chloride injection molded (one continuous piece of mate-

rial) golf shoes manufactured in and exported from England, and entered at Boston on December 7, 1970. They are described on the commercial invoice as "style PP30 Mens black/white waterproof super greensneaker."

The shoes were classified in liquidation under TSUS item 700.53 at the duty rate of 37.5 percent ad valorem. Item 700.53, with its superior heading, reads as follows:

	Footwear (whether or not described elsewhere in this subpart) which is over 50 percent by weight of rubber or plastics or over 50 percent by weight of fibers and rubber or plastics with at least 10 percent by weight being rubber or plastics:	
	Hunting boots, galoshes, rainwear, and *other footwear designed to be worn* over, or *in lieu of, other footwear as a protection against water*, oil, grease, or chemicals or cold *or inclement weather*, all the foregoing having soles and uppers of which over 90 percent of the exterior surface area is rubber or plastics (except footwear with uppers of nonmolded construction formed by sewing the parts thereof together and having exposed on the outer surface a substantial portion of functional stitching): [Emphasis supplied.]	
	* * * * * * *	
700.53	Other	37.5% ad val.

Plaintiff claims the merchandise is properly dutiable under TSUS item 700.55 as modified by T.D. 68–9, at the duty rate of 8.5 percent ad valorem. Item 700.55, with its superior heading, reads as follows:

	Other footwear (except footwear having uppers of which over 50 percent of the exterior surface area is leather):	
700.55	Having uppers of which over 90 percent of the exterior surface area is rubber or plastics (*except footwear* having foxing or a foxing-like band applied or *molded at* the sole and overlapping the upper) [Emphasis supplied.]	8.5% ad val.

The domestic interest was represented by Rubber Manufacturers Association through its counsel as amicus curiae.

All parties concede that the issue is whether or not the imported footwear is "footwear designed to be worn . . . in lieu of, other footwear as a protection against water . . . or cold or inclement weather . . . ."

The plaintiff produced two witnesses and introduced ten exhibits into evidence. The defendant produced six witnesses and introduced six exhibits into evidence.

The plaintiff's first witness, Ross L. Humphrey, director of public relations for the plaintiff, Stylo Matchmakers International, Inc., testified that he placed orders for shoes with Stylo Matchmakers International Limited in England, accepted the orders of shoes, handled orders from his company's clients—professional golfers and retail stores—and represented his company at trade fairs and trade meetings. He stated that the business of his company, which had been in operation for three years, was to import and distribute Stylo Matchmakers' golf shoes in all states except Alaska and Hawaii. A black and white, injection molded, guaranteed waterproof, golf shoe, with eleven metal spikes placed on each shoe and a kiltie over the eyelets, which is representative of the imported merchandise, was received in evidence as plaintiff's exhibit 1. Other exhibits introduced through Humphrey were exhibit 2, a collection of invoices of exhibit 1 golf shoes shipped to professional golfers by the plaintiff; exhibit 3, a brochure illustrating exhibit 1, the golf shoe in issue; exhibit 4, a price list that accompanied the brochure; exhibit 5, an advertisement of the shoe in issue; exhibit 6, a galosh; exhibits 7 and 8, two types of golf rubbers— one with metal spikes and one with rubber tips in place of spikes, which are worn over regular street shoes.

Humphrey stated that he had worn golf shoes like exhibit 1 in all types of weather. He admitted his feet would sweat more in exhibit 1 than in a leather golf shoe because the waterproof shoe would prevent perspiration from penetrating to the outside, but the shoe would not be uncomfortable.

Plaintiff's second witness, Richard E. Eagan, an insurance man, testified that he has been playing golf for 35 years, and has been wearing exhibit 1 in wet and dry weather since April 1973. He said that you only have to have one pair of golf shoes when you have exhibit 1.

Defendant's exhibit A is a letter to golf professionals from Stylo Matchmakers International which refers to a style like exhibit 1 as "guaranteed waterproof" which has been proven "in more than four years of usage on the wet British courses."

The defendant's first witness, Frank M. LeCompte, vice-president in charge of engineering of Tingley Rubber Corporation, explained

that the pull-over golf rubbers illustrated in exhibits 7 and 8 are made by the compression molding process which he said is similar to the injection molding process used in manufacturing in exhibit 1. He also identified a flier, exhibit B, which his company encloses with exhibit 7 explaining how useful the rubber is on a soggy turf; and exhibit C an advertisement of exhibit 7 which appears in a trade magazine.

The defendant's second witness, Arthur M. Bell, vice-president of Foot-Joy Incorporated for sales and marketing golf shoes to professional accounts, identified exhibit D, a rubber, waterproof golf shoe made in England and sold by Foot-Joy to be worn in wet weather or when the ground has heavy dew on it. He compared it to exhibit 1 and stated that both are wet weather golf shoes and he would not recommend either one for hot or fair weather as they do not breathe or allow air to circulate within the inside. He also identified exhibit E, a Goodyear welt leather golf shoe which is not waterproof.

Defendant's third witness, Philip G. Brown, assistant to the divisional president of the Consumer Products Division of Uniroyal Incorporated, is a chemist who has been concerned with product development and control for 36 years. He described exhibit 1 as "an injection molded shoe of some synthetic material as opposed to rubber," and exhibit D as "not an injection molded shoe," but made of several pieces of vulcanized rubber into one piece. Both exhibits 1 and D are chemically bonded, making them waterproof. On cross-examination Mr. Brown identified exhibit 9 which is a Uniroyal catalogue showing that leather and polyvinyl chloride golf shoes were both marketed as waterproof golf shoes by Uniroyal. He stated that laboratory tests had established that vinyl material was hotter than leather and does not pass moisture through itself as does leather.

Defendant's fourth witness, Ralph H. LaCroix, national sales and commodity manager for the Golf Division of Uniroyal Incorporated, said that Uniroyal withdrew the advertised waterproof golf shoe in March 1973, because the shoe failed and was not in fact waterproof. He said his company could not get good adhesion between upper leather and the sole, and with use the protective coating that was processed into it lost its effectiveness, and water leaked through the leather. According to his experience on golf courses as a participant in tournaments he said he observed the average golfer has between four and five pairs of shoes. An average golfer was described as one who plays once a week or more.

Defendant's fifth witness, Harold Berk, president of Songo Shoe Manufacturing Corporation, appeared pursuant to a subpoena. He testified that his company manufactures street and golf shoes, including a waterproof shoe, exhibit F, shown also in an advertisement sheet, exhibit 10. He described exhibit 1 as a replacement of a rubber, and that his company's golf shoe, exhibit F, is manufactured as a

replacement of a leather shoe. The bottom of exhibit F is clear vinyl, injection molded, and the upper is a calendered polyvinyl chloride injection molded to the bottom. It does not breathe, and is sold as a regular golf shoe.

Defendant's sixth witness, John Neville, Jr., assistant pro to George Lane at a golf club, and a member of the Professional Golfers' Association of America, said he sold shoes such as exhibit 1 in his pro shop as "a second shoe or a water shoe." He also said the average member of his golf club had an average of three or four pairs of shoes, one of which would probably be a water or protective shoe.

From the testimony of all of the witnesses for both plaintiff and defendant exhibit 1 is "a type of golf shoe." This conclusion, however, does not resolve the controversy, and a comparative analysis of the wording of the two competing tariff items—700.53 and 700.55—and their legislative history is required for an understanding of Congressional intent. Both tariff items refer to "other footwear" of "rubber or plastics."

Item 700.53 embraces "other footwear" (*whether or not described elsewhere in this subpart*) which is over 50 percent by weight of rubber or plastics." [Emphasis supplied.] Exhibit 1 is made of a composition which may be described broadly as over 50 percent by weight of plastics and could be classified under item 700.53 according to this standard. Item 700.55 also embraces "other footwear" which has "uppers of which over 90 percent of the exterior surface area is . . . plastic." Without more it might well be argued that exhibit 1 should likewise be classified under item 700.55. To say only that the language "whether or not described elsewhere in this subpart" following other "footwear" in item 700.53 negates the possibility of classifying any "other footwear" under any other item in subpart A would render the use of the term in item 700.55 meaningless. This makes imperative a reference to the legislative history to ascertain to which of the two "other footwear" tariff items exhibit 1 should be assigned.

The Report of the Tariff Commission in its Tariff Classification Study, to the Chairmen of the Committee on Ways and Means of the House and the Committee on Finance of the Senate with reference to schedule 7, part 1—"Footwear . . .," states that footwear made of "synthetic rubber as well as natural rubber and also of plastics" is embraced in 700.50 (now 700.53), and "A very large part of footwear covered by this item is commonly referred to as 'waterproof' footwear."[1] The exemplars of what is intended to be included are "Hunting boots, galoshes, rainwear, and other footwear designed to be worn over or in lieu of other footwear as a protection against water . . ."[2]

[1] Tariff Classification Study, Schedule 7, p. 23.
[2] *Ibid.*

It is stated on page 24 of the said report that " . . . item 700.55 would also include molded plastic shoes (*other than those of the so-called waterproof type provided for in item 700.50*" (now 700.53). [Emphasis supplied.] The underscored langauge seems to indicate an intention to exclude molded plastic shoes like exhibit 1 from item 700.55 and contain them in what is now item 700.53.

Also, page 25 of the said report indicates that " 'waterproof' footwear provided for in item 700.50" (now 700.53) is separated from the "non-waterproof" footwear provided "in item 700.55."

Section 57 of Public Law 89–241 enacted October 7, 1965, in substituting item 700.53 for item 700.50, indicated that the "other" footwear covered in the item had reference to "protective footwear," and the legislative history indicates the object of the legislation is to cover "waterproof footwear" which competes with other such or similar footwear domestically produced.[3]

The plaintiff places much emphasis on its argument that the imported merchandise is not *ejusdem generis* with the enumerated exemplars—hunting boots, galoshes and rainwear. *Ejusdem generis* means literally "of the same kind." The imported merchandise must possess the particular characteristic which unites all of the exemplars in order to be classified in the item containing the exemplars. *Kotake Co., Ltd., American Customs Brokerage Co.* v. *United States*, 58 Cust. Ct. 196, C.D. 2934, 266 F. Supp. 385 (1967). The courts use *ejusdem generis* as a rule to aid them in interpreting the intention of the legislature.

The common characteristic in the exemplars is that they are waterproof or water repellent and are worn in wet weather or wet areas, usually for protection against water. Exhibit 1 is waterproof and there is testimony that it is more similar to exhibit D, a vulcanized waterproof rubber shoe with metal spikes, than exhibit E, a welt leather golf shoe which is not waterproof. The most persuasive testimony is that exhibit 1 is a water shoe or a shoe worn mostly in wet weather, though it may be worn infrequently in fair weather.

Both the weight of the evidence and the legislative history which reconciles any apparent conflict between the two competing tariff items support the classification of exhibit 1 as "other footwear" which is *waterproof*, "*designed to be worn . . . in lieu of, other footwear as a protection against water*" (whether rain or dew), when playing golf; rather than an ordinary or general purpose golf shoe worn for playing golf in all kinds of weather. Plaintiff has not overcome the presumption of correctness attached to the district director's classifi-

[3] The Tariff Schedules Technical Amendments Act of 1965, P.L. 89–241, 79 Stat. 933 (1965). See Senate Report No. 530, U.S. Code Congressional and Administrative News 1965, Vol. 2, p. 3416, at pp. 3434–3435.

cation finding that the imported merchandise is dutiable under item 700.53, and its claim is overruled.

Judgment will be entered accordingly.

(C.D. 4557)

C. S. EMERY & COMPANY, INC. v. UNITED STATES

Stone products

Merchandise consisting of two-inch thick sawn slabs of black granite exported from Canada in 1964 was appraised on the basis of export value as defined in section 402(b) of the Tariff Act of 1930, as amended. Plaintiff's claim that the correct dutiable value was the ex-quarry price of the granite slabs, $2.10 per square foot, and not $3.015 per square foot, net packed, as appraised, overruled.

The appraiser's finding of value carries a statutory presumption of correctness. It was therefore incumbent upon plaintiff to establish that the appraised value was erroneous, and that such or similar merchandise was freely sold or, in the absence of sales, offered for sale to all purchasers at wholesale in the principal markets of Canada in the usual wholesale quantities and in the ordinary course of trade for exportation to the United States at the ex-quarry price of $2.10 per square foot. The record contains no evidence that such or similar merchandise was actually sold or offered for sale for export to the United States at an ex-quarry price during the period in issue. Plaintiff's willingness to sell ex-quarry to the defendant or to anyone else does not meet the requirements of export value as defined in the statute. See *United States* v. *Bud Berman Sportswear, Inc.*, 66 Cust. Ct. 628, A.R.D. 287 (1971), *aff'd*, 469 F. 2d 1107, 60 CCPA 34, C.A.D. 1077 (1972). Also, evidence of sales made in the home market to a Canadian purchaser several months after the merchandise at bar was exported has no weight in establishing either the price at which it was freely sold or offered for sale for *export* to the United States, or what the price was "at the time of exportation" as required by section 402(b). See *The A. W. Fenton Co., Inc.* v. *United States*, 61 Cust. Ct. 437, R.D. 11556 (1968), *application for review dismissed*, 61 Cust. Ct. 613, A.R.D. 246 (1968).

Court No. R67/913

Port of Derby Line, Vermont

[Judgment for defendant.]

(Decided August 27, 1974)

Barnes, Richardson & Colburn (*Joseph Schwartz* and *Irving Levine* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RE, Judge: In this appeal for reappraisement the merchandise consists of two-inch thick sawn slabs of black granite exported from

Canada on July 30, 1964 and entered at the border port of Derby Line, Vermont. The granite was shipped by truck from Alma, Quebec by the seller, National Granite, Ltd. (National) to the John Swenson Granite Co., Inc. (Swenson) at Concord, New Hampshire.

The customs and commercial invoices disclose that the granite was sold to Swenson at a delivered price ("FOB Concord N.H.") of U.S. $3.35 per square foot, including duties. It was entered at an invoiced unit value of U.S. $2.10 per square foot (selling price less claimed nondutiable charges of 97 cents per square foot for bracing and transportation, and 28 cents per square foot for duty and brokerage fees).

The merchandise was appraised on the basis of export value as defined in section 402(b), Tariff Act of 1930, as amended by the Customs Simplification Act of 1956, at U.S. $3.015 per square foot, net packed. According to the testimony of the appraiser, the appraised value was calculated by deducting 28 cents for duty and brokerage, and then deducting the freight charges within the United States from the border (Derby Line) to Barre, Vermont.

Plaintiff agrees that export value, section 402(b) *supra*, is the correct basis of appraisement, but contends that U.S. $2.10 per square foot, the alleged ex-quarry price of the granite slabs, represents the correct dutiable value. Plaintiff urges, alternatively, that if the appraiser's method of determining value is upheld, he should have made a larger allowance for duty, i.e., 36.416¼ cents which, with the uncontested deductions for brokerage and freight, would result in a dutiable value of U.S. $2.91⅓ per square foot, net packed.

The record consists of the official papers, the testimony of two witnesses called by plaintiff, and four exhibits also submitted by plaintiff.

Mr. Paul Robitaille, president and general manager of National, who supervised production, administration and sales, testified that National produces rough, semifinished and finished granite mainly for building work; that the imported granite came from a quarry located about 25 miles from its office in Alma, Quebec; and that the shipment herein was delivered pursuant to a contract (exhibit 1) with Swenson for the sale of granite slabs and blocks to be used in construction of a building in New York City. National used its own trucks and braces to transport most of the merchandise to Concord. Swenson, which has finishing facilities in Concord, New Hampshire, put the finish on the rough sawn slabs and cut them to size, ready for installation in the building then under construction.

The contract, which is dated March 21, 1963, in relevant part, provided that National "deliver sufficient wire sawed slabs so that Swenson may fabricate therefrom * * * approximately 190,000 net square feet of 2 inch thick stones * * *." Delivery of the two-inch slabs was to

commence on or about February 20, 1963 in quantities of "approximately 5,000 net square feet of 2 inch slabs each week until completion." Deliveries, Mr. Robitaille testified, commenced early in 1963 and ended about two years later.

The agreement called for payment of U.S. $3.35 per net square foot for two-inch slabs "delivered to and accepted by Swenson" with the proviso that—

> "(8) The prices for slabs set forth in paragraph (7) include the costs of delivery to Swenson at its plants in Concord, New Hampshire. If Swenson shall direct delivery of slabs to other fabricating plants in New England, the prices shall be adjusted to reflect any increase or decrease in the cost to National of delivery. * * *"

The contract provided that National could bill Swenson at the rate of $2.50 per square foot for any slabs in stock it had on hand at the end of any month. It also provided that in the event Swenson terminated the agreement for any cause except breach or default by National, Swenson would pay $2.50 per square foot for all slabs produced by National and in stock in Canada.

Mr. Robitaille, who had participated in the contract negotiations with Swenson, said that National "tried to arrive at a higher price, of course, and we came to this final price" of $3.35 per square foot. He had estimated that National would make a profit on the $3.35 price by figuring on 50 cents per foot for material, $1.50 for labor and 25 cents for depreciation and profit, which came to $2.25 in Canadian currency and $2.10 in United States currency. He then arrived at the $3.35 figure by adding 97 cents to cover the cost of bracing and transportation down to Swenson's plant, and 28 cents for duty and brokerage fees.

Mr. Robitaille testified that bracing was necessary to protect the brittle granite slabs against breakage during shipment. He admitted, on cross-examination, that in establishing a "cost of the price for the Swenson order, I took into consideration the volume of the job and the size of the stone."

The witness "would" have sold the merchandise ex-quarry to Swenson at a price of U.S. $2.10 per square foot. However, since the slabs were brittle and subject to excessive breakage if hauled by inexperienced people, Swenson wanted a delivered price so that National would be responsible for breakage.

Mr. Robitaille testified that, during the 1963–1965 period that National was delivering granite to Swenson, it had quoted a price of $2.25 per square foot, Canadian Currency, f.o.b. its plant to a Canadian firm for black granite slabs similar to those in issue. It produced three invoices (exhibits 2, 3 and 4) for sales in December 1964 and

February 1965 of two-inch black granite slabs at $2.25 per square foot to a firm in Quebec.

The witness was willing to sell the material at the $2.25 price to anybody at that time. But he could "not recall" whether he sold similar slabs to other firms during this period, stating that "[t]hese [Quebec invoices] are the only invoices we found." However, he noted that "[i]t does not mean that we did not sell more." He subsequently stated under cross-examination that he could not recall sales in 1963, but that "[w]e had other customers in 1964, I think," which sales were made "[p]robably by written orders."

When asked if he had entered into written agreements during 1965 with purchasers other than Swenson for the sale of two-inch granite slabs, Mr. Robitaille replied "[p]ossibly, but I do not recall either." Upon further questioning, he agreed that during 1963, 1964 and 1965 he sold to others than Swenson; that the sales were usually in the form of a written order; and that he would keep a copy of the order "[f]or a certain period of time * * *." However, he could not produce any contracts or memoranda of the sales made during this period.

The witness explained that it was not possible to have price lists, and that National seldom gave standard prices because they "vary with the type of granite, the finishes, the thicknesses, and the work involved in the stone."

Mr. Robitaille stated that the provision in the Swenson contract for payment of $2.50 per net square foot, for all undelivered slabs National had on hand at the end of the month, covered storage costs. It was also intended to assist National financially since its plant had burned down and the machinery had to be rebuilt. The provision for payment of $2.50 per net square foot, in the event of Swenson's default, for all slabs on hand was intended as compensation to National for spending "so much money to build machinery and equip a plant."

Mr. William L. Thornton, the district director at St. Albans, Vermont, testified he had personally appraised the shipments of granite, including the one at bar, imported under the Swenson contract. The appraised value was arrived at as follows:

> "They started off at $3.35, and the information I had at the time was that the brokerage and duty amounted to 28¢, and the difference between the two nets would be the inland freight. I allowed the freight only within the United States."

Although the entry papers show that the merchandise went to Concord, New Hampshire, Mr. Thornton deducted the prorated freight charge between Derby Line, Vermont and Barre, Vermont, stating that "a lot of them [shipments to Swenson] stopped off in Barre." He made the same deduction in all of the granite shipments from National.

The witness stated that he had customs agents make inquiries as to how National sold the granite. Since no information was available, that it sold at ex-quarry prices, he used the delivered sales price of $3.35 in making the appraisements.

As to its first cause of action, plaintiff contends that under the export value formula it has established that the proper dutiable value for the imported granite is U.S. $2.10 per square foot ($2.25 per square foot, Canadian currency).

Export value is defined in section 402(b), as amended, *supra*, as follows:

> "(b) EXPORT VALUE.—For the purposes of this section, the export value of imported merchandise shall be the price, at the time of exportation to the United States of the merchandise undergoing appraisement, at which such or similar merchandise is freely sold or, in the absence of sales, offered for sale in the principal markets of the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States, plus, when not included in such price, the cost of all containers and coverings of whatever nature and all other expenses incidental to placing the merchandise in condition, packed ready for shipment to the United States."

The phrase "freely sold or, in the absence of sales, offered for sale," in section 402(f)(1), Tariff Act of 1930, as amended, insofar as pertinent herein, means sold or, in the absence of sales, offered:

> "(A) to all purchasers at wholesale, or
>
> * * * * * * *
>
> without restrictions as to the disposition or use of the merchandise by the purchaser, except restrictions as to such disposition or use which (i) are imposed or required by law, (ii) limit the price at which or the territory in which the merchandise may be resold, or (iii) do not substantially affect the value of the merchandise to usual purchasers at wholesale."

The appraiser's finding of value carries a statutory presumption of correctness (28 U.S.C. § 2633, superseded by 28 U.S.C § 2635 by the Customs Courts Act of 1970, Pub. L. 91–271). It was, therefore, incumbent upon plaintiff to establish, by competent satisfactory evidence, that the appraised value was erroneous, and that such or similar merchandise was freely sold or, in the absence of sales, offered for sale to all purchasers at wholesale in the principal markets of Canada in the usual wholesale quantities and in the ordinary course of trade for exportation to the United States at the alleged ex-quarry price of U.S. $2.10, or $2.25, Canadian currency.

The record does not contain the required proof, and the presumption of correctness has not been rebutted. There is no evidence that such or similar merchandise was actually sold or ever offered

for sale for export to the United States at an ex-quarry price during the period in issue. Although Mr. Robitaille stated that National "would" have accepted an ex-quarry price of U.S. $2.10 from Swenson or "anybody," he never testified that National actually sold two-inch granite slabs for export to the United States at such price during the period in issue; nor was he able to recollect the price quoted on slabs at that time.

It is proper to note the witness' admission that similar granite slabs were sold for export to the United States in 1964 and 1965 and his failure to produce any documents relating to those transactions. He did, however, have on hand invoices showing sales at an ex-quarry price ($2.25 Canadian currency) to a Canadian firm in those years. Under the circumstances, his unexplained failure to offer evidence of the price at which the sales of granite slabs for export to this country were made warrants an inference unfavorable to plaintiff's claim.

Furthermore, Mr. Robitaille's willingness to sell ex-quarry to Swenson or anybody else does not meet the requirements of export value as defined in the statute. The export value formula addresses itself to the realities of the marketplace, that is, it contemplates a market value that is established by what is *actually* done in terms of sales and offers of sale, not by mere possibilities. Thus it is well settled that neither willingness to sell merchandise at a particular price, nor the fact that it could have been sold at a particular price, is evidence of a price. *United States* v. *Bud Berman Sportswear, Inc.*, 66 Cust. Ct. 628, A.R.D. 287 (1971), *aff'd*, 469 F.2d 1107, 60 CCPA 34, C.A.D. 1077 (1972); *Delmonico International Corp.* v. *United States*, 52 Cust. Ct. 656, A.R.D. 176 (1964). See also *Ontario Stone Corporation* v. *United States*, 319 F. Supp. 923, 65 Cust. Ct. 753, R.D. 11727 (1970).

Finally, evidence of sales made in the home market to a *Canadian* purchaser four and six months after the merchandise at bar was exported has no weight in establishing either the price at which it was freely sold or offered for sale for *export* to the United States or, indeed, what the price was "at the time of exportation" of the subject merchandise, as required by section 402(b) *supra*. See *United States* v. *Robert Reiner, Inc.*, 35 CCPA 50, C.A.D. 370 (1947); *The A. W. Fenton Co., Inc.* v. *United States*, 61 Cust. Ct. 437, R.D. 11556 (1968), *application for review dismissed*, 61 Cust. Ct. 613, A.R.D. 246 (1968); *Sam Yeung Co.* v. *United States*, 52 Cust. Ct. 572, 575, R.D. 10760 (1964).

In the absence of any showing that the merchandise was freely sold for export to the United States to all purchasers at wholesale on an ex-quarry basis, plaintiff must fail on its first claim since it has failed to sustain its burden of proof.

For its alternative claim, plaintiff accepts the appraiser's presumptively correct determination that the export value for the merchandise is the delivered price of U.S. $3.35 per square foot less nondutiable charges consisting of duty, brokerage, and freight charges within the United States. It contends, however, that the customs officer failed to deduct a sufficient amount for the duty.

For purposes of this claim plaintiff relies upon the principle that a party may challenge one or more of the elements entering into an appraisement while relying upon the presumption of correctness of the appraiser's return as to all other elements. *United States* v. *Fritzsche Bros., Inc.*, 35 CCPA 60, C.A.D. 371 (1947); *Ontario Stone Corporation* v. *United States*, 319 F. Supp. 923, 65 Cust. Ct. 753, R.D. 11727 (1970); *Alvin Naiman Corporation* v. *United States*, 54 Cust. Ct. 705, R.D. 11008 (1965). Where, as here, the appraisement was made by working backward from a delivered price in Concord, New Hampshire to a price at the Canadian border, and there is no dispute as to which charges were deducted, the appraisement is deemed to be separable. *Ontario Stone Corporation* v. *United States*, *supra; Alvin Naiman Corporation* v. *United States*, *supra*. Accordingly, plaintiff may challenge the deduction for duty, while relying upon the presumption of correctness attaching to the other elements of the appraisement. *Alvin Naiman Corporation* v. *United States*, *supra*.

The appraiser had arrived at a value of $3.015 per square foot by deducting 28 cents per square foot for duty and brokerage from $3.35, and deducting an additional 5.5 cents per square foot (the difference between $3.07 and $3.015) for the freight charges from the port of entry, Derby Line, Vermont, to Barre, Vermont. It is not disputed that the allowance of 28 cents includes 1.75 cents for brokerage and 26.25 cents for duty. The duty figure was based on the apparently applicable rate of duty of 12.5 per centum ad valorem [1] upon the entered value of $2.10.

Plaintiff expressly concedes that the amount of duty figured in the delivered duty-paid price of $3.35 was 26.25 cents (based on 12.5 percent of $2.10), and that the special customs invoice states that the "selling price of 3.35 includes * * * .28 per foot for duty and brokerage fees." It claims, nonetheless, that the "included" duty should be based on 12.5 percent of $3.2775, that is, the delivered price of $3.35 less 5.5 cents freight, less 1.75 cents brokerage. This would result,

[1] The entry papers disclose that the granite slabs had been entered by the importer and advisorily classified by customs as dutiable at 12.5 per centum ad valorem under TSUS item 513.74, which provides, among others, for articles of granite, sawed, suitable for use as monumental, paving or building stone. It may be noted that merchandise entered prior to the effective date of the Customs Courts Act of 1970, Pub. L. 91-271 is not liquidated until the appraisement becomes final. *New York Merchandise Co., Inc.* v. *United States*, 51 Cust. Ct. 255, Abs. 68111 (1963). Hence, the subject importation, which is before the court on an appeal for reappraisement, has only been "advisorily" classified.

according to plaintiff's calculations, in a deduction of 36.416¼ cents per square foot for duty, leaving a dutiable value of $2.91⅓ per square foot, United States currency, net packed.

Plaintiff argues that "[s]ince this figure [$3.2775] includes 12.5% duty, when divided by 112.5%, the result is equal to the dutiable value less included duty at 12.5%."

Plaintiff is in error as to the nature of the deductions allowed under the export value statute. The value contemplated under section 402(b), as amended, is the *per se* price of the goods in the principal markets of the country of exportation, plus the cost of packing and other expenses incidental to placing the goods in condition for shipment. Thus, charges accruing subsequent to the time of shipment are not ordinarily included in dutiable export value and, where the goods, as here, are sold at a c.i.f. duty-paid price, the duty may not be included. *Josef Mfg., Ltd.* v. *United States*, 294 F. Supp. 956, 62 Cust. Ct. 763, R.D. 11616 (1969), *aff'd*, 314 F. Supp. 51, 64 Cust. Ct. 865, A.R.D. 274 (1970), *aff'd*, 460 F.2d 1079, 59 CCPA 146, C.A.D. 1057 (1972); *The A. W. Fenton Co., Inc.* v. *United States*, *supra*. Accordingly, only the actual duties which comprised part of the selling price are deductible.

It is clear from the foregoing that the amount claimed by plaintiff is unrealistic and, if allowed, would result in a dutiable value that bears no relationship to the actual transaction. On the other hand, Mr. Thornton's allowance of 26.25 cents, which equals the actual amount included for duties in the $3.35 price, comports with the statutory requirements and was entirely proper. Therefore, plaintiff has failed to establish its alternative claim.

The court also considered plaintiff's contention that the appraisement herein is erroneous because Mr. Thornton testified to making the same deductions in appraising all of the shipments of two-inch granite slabs delivered under the Swenson contract, although some importations, including the instant one, went to Concord, New Hampshire and the others went to Barre, Vermont.

Plaintiff relies, in its argument, upon *United States* v. *Josef Mfg., Ltd.*, 460 F.2d 1079, 59 CCPA 146, C.A.D. 1057 (1972). The *Josef* case dealt with two shipments of dresses imported from Canada at Champlain, New York, one of which was destined for Florida, and the other for Illinois. Both shipments, which were of different weights, had been sold at uniform c.i.f. delivered prices, including all charges, freight and duty. Utilizing export value as the basis of valuation, the appraiser took the uniform c.i.f. prices, deducting in each case the identical freight charge from Montreal to New York. This, however, did not represent the actual freight paid in either shipment, since, because of the different destinations, each freight charge differed.

The appellate court agreed with the holding of the trial judge that the freight deductions were erroneous because they did not represent

the actual freight charges, and that uniform c.i.f. prices, which included freight charges that were variable depending upon the location of the customer, could not be used as a basis for appraisement because they negated the existence of a single home market price for the merchandise—a prerequisite for a determination of statutory export value. This is explained in the following statement of the court:

> "We also agree that the appraiser could not make the exporter's uniform c.i.f. prices usable as the basis for statutory appraisement merely by deducting therefrom the freight from Montreal to the New York border. Even if the appellee did not rebut the presumption of administrative correctness by its witness's somewhat ambiguous testimony that the appraiser's deductions were 'not the actual freight paid on this shipment' and assuming that the actual freight charges for transporting two cartons, one weighing 6 lbs. 3 oz. and one weighing 26 lbs., from Montreal to Champlain, N.Y. were both $7.88, the c.i.f. prices of the two customers involved here still included the costs of shipping the goods from Champlain to Chicago, Ill., and Miami Beach, Fla., respectively. Necessarily that means that the prices of the goods per se were not the same to the two customers, or to various other customers in various other parts of the United States. Accordingly, there was no uniform price for the imported *goods*, as distinguished from a uniform price for the package consisting of the goods, the freight, and the insurance, and no individual price, or average price, will substitute for such a uniform price under the statutory scheme. * * *" (Emphasis in original.) 59 CCPA at 150.

The *Josef* case differs markedly in its factual aspects from that at bar. There is only one shipment in this case, and, while Mr. Thornton testified to making identical deductions in the other entries of two-inch granite slabs shipped under the Swenson contract, it is not clear from his statements that the c.i.f. delivered price was the same in all shipments, regardless of destination. The uncertainty is compounded by the terms of the agreement (exhibit 1) which provide in paragraph 8 that—

> "The prices for slabs set forth in paragraph (7) include the costs of delivery to Swenson at its plants in Concord, New Hampshire. If Swenson shall direct delivery of slabs to other fabricating plants in New England, the prices shall be adjusted to reflect any increase or decrease in the cost to National of delivery. * * *"

Thus, under the contract the c.i.f. delivered price would vary in accordance with the differing delivery costs to National if Swenson had the slabs delivered elsewhere than to its plant in Concord, New Hampshire. There is no indication in the record that a price adjustment was not so made to reflect the differing delivery cost, if any, to National when the merchandise was shipped to Barre, Vermont, or that the appraiser did not use the adjusted c.i.f. prices in appraising those ship-

ments. Therefore, in the absence of competent evidence that the goods were sold at a uniform c.i.f. price regardless of the place of delivery, the holding in the *Josef* case, as to the nonexistence of a single home market price, is not applicable.

The appraiser's error, if any, lies in deducting the freight charges from Derby Line, Vermont to Barre, Vermont rather than to Concord, New Hampshire, the place of delivery. While delivery charges often vary according to destination, in this record there is not a scintilla of evidence as to the actual difference in the cost to National of trucking the merchandise either to one place or the other, or that it was more than *de minimis*. In the absence of testimony as to terrain, location, available highway routes and other essential data, the court cannot make appropriate findings.

Furthermore, having specifically adopted the appraiser's return, plaintiff has not challenged the amount deducted for freight. Therefore, as plaintiff has failed to meet its dual burden of establishing error in the appraisement, and the correctness of its claimed value, the appraisement must stand. *Minkap of California, Inc.* v. *United States*, 55 CCPA 1, C.A.D. 926 (1967); *Kobe Import Co.* v. *United States*, 42 CCPA 194, C.A.D. 593 (1955).

In view of the foregoing, the appraised value is affirmed.

Judgment will be entered accordingly.

(C.D. 4558)

SWEET BRIAR, INC. *v.* UNITED STATES

Administration

RELIQUIDATION FOR FRAUD—REPORTS OF CUSTOMS REPRESENTATIVES—ABSENCE OF FINDINGS BY DISTRICT DIRECTOR

Ladies dresses manufactured in and exported from the Philippine Islands were classified in liquidation upon entry at Atlanta, Ga. under TSUS item 382.03 and treated as "Philippine articles" in accordance with Headnote 3(c) of TSUS, and thereafter reliquidated pursuant to 19 U.S.C.A. § 1521 at the rate advance on 2 of 11 entries involved and at a value advance on all 11 entries. In its protest the importer claims the reliquidations to be illegal and void.

The evidence shows that the reliquidations were performed by a liquidating officer in possession of copies of a customs agent's report and a letter from the regional commissioner of customs suggesting reliquidation under section 1521 for undervaluation and false invoicing which was said to have been handed to the liquidating officer by the assistant district director. There was no evidence that the

district director made a finding of probable cause to believe there was fraud in the case before the reliquidation. Also, an examination of the two customs representatives' reports giving rise to the reliquidations reveals that one of the customs representatives concluded that the undervaluation was the result of a "slip up"; and the data in the other customs representative's report appeared to be incompatible with the charge of invoicing with a false country of origin in that the photocopy of the certificate of identification on which the customs agent relied describes the merchandise exported from the Philippines to the United States as 624 dozen dresses on its face. and a photocopy of a document stapled to the back of the certificate shows various entries into the Philippines of a variety of merchandise which is not shown to be in any way connected with the 624 dozen dresses described on the face of the certificate.

Held, where a statute requires a finding to be made by an official before an action can be authorized, the "finding" is the *sine qua non* to the taking of the action, and where the evidence adduced by the Government in support of reliquidations challenged by the importer fails to establish that the district director made the requisite "findings" of probable cause to believe that there was fraud in the case under section 1521 prior to the reliquidations, the reliquidations are illegal and void.

United States Customs Court, Third Division

Protest 66/74111 against the decision of the district director of customs at the port of Savannah

[Judgment for plaintiff.]

(Decided September 23, 1974)

Rode & Qualey (*Ellsworth F. Qualey* and *John S. Rode* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Velta A. Melnbrencis* and *Glenn E. Harris*, trial attorneys), for the defendant.

Before RICHARDSON, LANDIS, and NEWMAN, Judges

RICHARDSON, Judge: The merchandise in this case consists of ladies dresses which were manufactured in and exported from the Philippine Islands in 1963 and 1964, classified in liquidation under TSUS item 382.03 upon entry at the port of Atlanta, Georgia, and accorded the duty rate reduction authorized for "Philippine articles" under General Headnote 3(c) of the Tariff Schedules of the United States. The plaintiff protests the reliquidation of 11 entries pursuant to 19 U.S.C.A., section 1521 (section 521, Tariff Act of 1930) under which the reduced duty rate was disallowed as to two of the entries, namely, A188 and A1272, allegedly because the dress material was said to

have been imported into the Philippines directly from Japan and not from the United States, and the values were increased on all of the entries to include an "embroidery charge" said to have been omitted from the invoice values. The reliquidations resulted in increased duties being assessed against the plaintiff, and it filed the instant protest alleging the reliquidations to be illegal.

Plaintiff contends that a reliquidation under section 1521 does not authorize a "reappraisement" of the merchandise, and further, that the evidence does not establish that the district director either made a finding of probable cause to believe that there was fraud or that he could have had probable cause to believe there was fraud in the case.

The case was submitted upon the official papers which were offered by the plaintiff, and documentary evidence and the testimony of two witnesses which was offered by the defendant.

The record shows that the "reliquidations" had their genesis in two reports of customs representatives on the subjects of undervaluation and false invoicing. The first report (exhibit B–1) is authorized by Customs Representative Perry J. Spanos stationed in Hong Kong, and is dated June 19, 1964. It deals with Sweet Briar entries made at ports other than Atlanta. The Spanos report states the relationship between Sweet Briar (the American importer), Kalaw Clothes Factory (the Philippine manufacturer) and Toyo Menka Kaisha (the Japanese seller) as follows:

> Sweet Briar, Inc., of the United States ships United States made [1] (or Japanese made, but dyed and finished in the United States) cloth material on consignment to Kalaw Clothes Factory in Manila. Toyo Menka Kaisha, Osaka, Japan, ships various accessories such as buttons, zippers, belt-backings, hook and eye, on consignment to Kalaw Clothes Factory in Manila.
>
> Kalaw Clothes Factory cuts and sews the fabric into ladies dresses, suits, and blouses and then ships the garments to Sweet Briar, Inc., of the United States. The payments are arranged as follows: Sweet Briar, Inc., of the United States, advances a letter of credit to Toyo Menka Kaisha of Hong Kong which includes the value of the accessories, the making charges and commission (profit) earned by Toyo Menka. Toyo Menka, Hong Kong, advances a letter of credit to Toyo Menka, Osaka, for the value of the accessories and another letter of credit to Kalaw Clothes Factory in Manila for the making charges. This operation is graphically illustrated on attached Exhibit A.

The "Exhibit A" referred to in the Spanos report also indicates, among other things, that the Sweet Briar payments to Toyo Menka

[1] Customs Representative Spanos verified that between June 17, 1963 and February 11, 1964, Sweet Briar made four shipments of synthetic cloth material to Kalaw Clothes Factory totaling 160,000 yards.

Kaisha, Hong Kong, included an amount for "embroidery charges." However, the report asserts that certain embroidery charges incurred in the Philippines on uncut material of American origin shipped there by Sweet Briar were not listed on the invoices covering the finished garments coming back to this country. In this connection the report states:

> The additional embroidery cost has never been shown on any of the invoices of supporting documents. . . .

And the Spanos report goes on to state:

> The reason for the numerous irregularities in the invoices of the instant merchandise listed in the letter from the customs agent in charge, Charleston, South Carolina, dated April 29, 1964 (C–8–50), are possibly due to "slip ups" by the seller in not adding the correct embroidery charges on the final invoice.

The "seller," according to the Spanos report, is Toyo Menka Kaisha, Ltd., of Osaka, Japan, who, the record shows, had also entered into a written contract with Kalaw Clothes Factory to furnish Kalaw with "raw materials" and "supplies" to be made into finished garments and shipped to any destination (except communist dominated territories) as instructed by Toyo Menka Kaisha. ("Exhibit B" of the Spanos report.) And it was the "seller" who controlled the price quotations recorded on the invoices investigated in the Spanos report.

The second report (exhibit B–3) giving rise to the "reliquidations" is authored by Senior Customs Representative Stewart H. Adams, also stationed in Hong Kong, dated July 13, 1965. This report transmits to the customs agent in charge at Savannah, Georgia, certified copies of Philippine customs documents purporting to show "that 21 United States entries were made of other than United States and Philippine materials." The Philippine documents referred to in the Stewart report are said to involve 11 entries made at Atlanta, 9 made at San Francisco, and 1 made at New York. Copies of some of these documents are annexed to the official papers in entry A1272,[2] and consist of: (1) a certificate of inspection, identification, and loading of the merchandise covered by entry A1272 pertaining to 624 dozen ladies dresses issued by the Philippine Embroidery and Apparel Control and Inspection Board, (2) a listing of entry numbers of merchandise imported into the Philippines together with a description and quantity of the merchandise stapled to the reverse side of the aforementioned certificate, and (3) four Philippine customs entries covering rayon and cotton fabrics imported from Japan and bearing entry numbers

[2] Documents relating to other entries before the court were not put into evidence inasmuch as it was said that they were no longer available.

which are the same as some of the entry numbers appearing on the aforementioned listing.

On the basis of exhibits B–1 and B–3, among other things, a third report (exhibit B) was compiled, and this by George C. Corcoran, Jr., customs agent in charge at the port of Savannah, who was one of the two witnesses who testified at the trial herein. The Corcoran report was addressed to the district director at Savannah under date of February 14, 1966, and reported alleged violations under 19 U.S.C.A., sections 1481, 1485, and 1592 against the plaintiff.

With respect to the omission of the embroidery charges reported in exhibit B–1, the Corcoran report states:

> During the investigation in the offices of Kalaw Clothes Factory, it was found that an embroidery charge averaging $9.20 per dozen for dresses, $4.50 per dozen for ladies' suits and $2.54 per dozen for ladies' blouses is incurred during the manufacture of these items; and this charge is not included on the invoices which were filed in support of entries covering the importation of this type of clothing.

And as to the entries at bar, the Corcoran report states:

> . . . A review of the Atlanta consumption entries covering Kalaw's shipments to Sweet Briar, Inc. disclosed the embroidery charges were not shown on the supporting invoices of seventeen entries.

With respect to the matter of false invoicing (i.e., country of origin), the Corcoran report states:

> On June 19, 1964 the Senior Customs Representative, Hong Kong made a report of his investigation, file 8–206 (Exhibit 4) at the factory of Amado L. Kalaw Clothes Factory, Philippine Islands. Investigation showed that Toyomenka Kaisha of Hong Kong actually contracts with Kalaw Clothes Factory to make up blouses, dressses and other items of clothing which are imported by Sweet Briar, Inc.

The report goes on to state:

> On February 8, 1965, I forwarded eighteen Atlanta entries to the Senior Customs Representative, Hong Kong. In a report dated July 13, 1965, the SCR, Hong Kong forwarded Philippine customs documents to this office and a review of these documents disclosed the fabric used in the manufacture of garments covered by six entries were invoiced as material of United States origin when, in fact, the material used was of Japanese origin. . . .[3]

[3] At the trial Mr. Corcoran was asked on direct examination by Government counsel how he determined that the material used in the manufacture of the merchandise covered by entry A1272 was of Japanese origin, and he replied (R. 82–83):

A. Well, as I recall, this was the case in all six entries, and I am sure in this case, the export documents from the Philippines showed the Philippine consumption entry numbers on the material, that was withdrawn from bond, to be manufactured, and they have the warehouse entries here, and they show the material was actually shipped from Japan to the Philippines and that the merchandise was Japanese merchandise.

The balance of the report deals with the method of arriving at the proper constructed value and the loss of revenue to the Government resulting from the undervaluation and false invoicing. A copy of exhibit B–1 is annexed to the Corcoran report, among other documents, but exhibit B–3 does not appear to be among them.

The record shows that at the time in question Mrs. Marion F. Baker was the district director of customs at Savannah. Apparently, Mrs. Baker, upon receipt of the Corcoran report, communicated by letter with the regional commissioner of customs at Miami in April 1966, concerning the matter. The regional commissioner wrote to Mrs. Baker under date of April 26, 1966, as follows (exhibit A):

> Dear Mrs. Baker:
>
> This is in response to your letter of April 11, 1966, regarding penalties against Sweet Briar, Inc., Greenwood, South Carolina, for false invoicing and undervaluation.
>
> We believe that the attorney for the importer is entitled to know exactly what accusations are being levied against his client. This may be done by exhibiting a representative entry to Mr. Rode. Savannah entry A188 dated August 3, 1964, would be an excellent example in that it shows that the merchandise is undervalued (embroidery charges are not included) and that the entry showed a false country of origin in order to obtain preferential rates.
>
> In order to recover the actual loss of revenue, it is suggested that the liquidated entries covered by this case be reliquidated as soon as possible (Sec. 521 T.A.) using the constructed values shown in the Savannah CAC's report of February 14, 1966, file S–8–423.
>
> Sincerely yours,
>
> /s/ James H. Stover
>
> JAMES H. STOVER,
> *Regional Commissioner.*

At the trial Eugene H. Cobb, import specialist at Savannah, testified that the subject entries were originally liquidated "as entered" either by him or under his supervision at the entered values which became the appraised values, and at the entered rates of duty which were the Philippine preferential rates. The "reliquidations" in question were performed by the witness Cobb. As to his authority for reliquidating the subject entries Mr. Cobb testified on direct examination by Government counsel as follows (R. 33):

> Q. Did there come a time in early 1966, Mr. Cobb, when you received instructions from any of your superiors to reliquidate the entries which you have just identified?—A. Yes, sir.
>
> Q. Approximately, when did that occur?—A. Well, we received the authority from the Regional Commissioner of Customs, I believe, on April 24, 1966, which was passed down to me from the District Director through her Assistant in charge of classification and value, which was Mr. William F. Murray, and I proceeded with the reliquidation of the entries.

The witness identified exhibit A as being "the authority from my superiors to reliquidate under Section 521 of the Tariff Act." And he testified that he was in possession of copies of exhibits A and B when he reliquidated the subject entries.

The district director, Marion F. Baker, was not called as a witness in the case.

Section 1521 reads:

> If the collector finds probable cause to believe there is fraud in the case he may reliquidate an entry within two years (exclusive of the time during which protest is pending) after the date of liquidation or last reliquidation.

The language of this statute contemplates a "finding" on the part of the district director (who succeeded to the powers of the collector) that probable cause exists to believe there is fraud in the case as a prerequisite to a reliquidation of an entry under the statute. See section 173.6, Customs Regulations. Where a statute requires a finding to be made by an official before an action can be authorized, the finding is the *sine qua non* to the taking of the action. *Power Comm'n* v. *Pipeline Co.*, 315 U.S. 575, 583 (1942). In the instant case there is no evidence that the district director, Marion F. Baker, ever made such a "finding" following her receipt of exhibit A. And there is no evidence of record as to the district director's state of mind following her receipt of exhibits B and B–1. Although defendant's counsel has argued extensively both at the trial and in his brief in support of the admissibility of evidence on the question of probable cause, he did so on behalf of Mr. Cobb,[4] the liquidating officer, whose function in these premises was ministerial. Consequently, Mr. Cobb's state of mind relative to culpability on the matters the subject of investigation is irrelevant. Additionally, assuming the district director's authority to make a "finding" is delegable by her or her assistant district director there is no evidence of a delegation by her, and there is no evidence before the court of any letter of transmittal or conversation the witness Cobb may have had with William F. Murray, assistant district director, who is said to have handed exhibit A to the witness and who was in charge of entry liquidation.

The court cannot assume that a "finding" under section 1521 had been made by the district director in this case. On the basis of evidence disclosed in the customs agents' reports we think a belief of fraud

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[4] Direct examination of witness Cobb (R. 38):

BY MR. HARRIS: (Cont'g)

Q. Mr. Cobb, do you have any personal knowledge as to the truth or lack of truth of the assertions in Defendant's Exhibit A for Identification that the embroidery charges were not included in the original appraised values of the merchandise in the various entries about which you have testified, or that the country of origin of the merchandise was falsely stated? Do you have any personal knowledge?—A. None, other than what was presented to me on the attachment of the agent's report. I had to rely entirely on that.

would have been premature. Insofar as the embroidery charges are concerned, the Spanos report shows that embroidery charges were actually paid by the plaintiff; and the customs agent himself characterized their omission from the invoices as having been a "slip up." Thus, while the customs agent's report might be adequate to support a technical charge of undervaluation *per se*, it could hardly be sufficient to support the more serious charge of fraud.

As for the country of origin charge, the reports show that Kalaw Clothes Factory was the depository of synthetic fabric material originating from both Japan and the United States at or about the same time [from Japan by virtue of the formal contract identified as "Exhibit B" in the Spanos report and erroneously characterized in the Corcoran report as necessarily giving rise to the Sweet Briar importations]. Hence, it is not in the least surprising that Kalaw should have been the recipient of fabric material from time to time originating in Japan, and this, while it was doing business with the plaintiff, as is reflected in the Philippine warehouse and consumption entries set forth in entry A1272 and transmitted to this country via exhibit B–3.

The only evidence which purports to connect these Philippine entries with the fabric material covered in entry A1272 is the presence of the "listing" heretofore mentioned in some 20 withdrawals bearing Philippine entry numbers that is attached to the reverse side of the Philippine export inspection certificate filed at the time of exportation of the merchandise covered by United States entry A1272. Apparently, this "listing" was taken at face value by the customs agents as linking the Philippine import and export entries.

But upon examination of this document the court finds that two things militate against the making of any such judgment concerning it on face value as was apparently made by the customs agents involved. One is that the withdrawal listing on one side of the document does not have the remotest connection with anything contained in the inspection certificate on the other side of the same document. The photocopy of the certificate of identification describes the merchandise exported from the Philippines to the United States as 624 dozen dresses on its face, and a photocopy of a document stapled to the back of the certificate shows various entries into the Philippines of a variety of merchandise which is not shown to be in any way connected with the 624 dozen dresses described on the face of the certificate. And the other thing is that the inspection certificate covers products whose spun rayon linen material content amounts to 8,852.29 yards according to the invoice in entry A1272, whereas the withdrawal of spun rayon linen as shown in the "listing" amounts only to 630 yards. Thus, here too, there is no real evidence to justify a belief of fraud.

The court does not at this juncture desire to be understood as substituting its own judgment in the matter for that of the district director.

But it has not been shown to the court that the district director ever made the "finding" of probable cause to believe that there was fraud as is contemplated under section 1521, nor does the record here establish that there was reason to believe there was fraud.

The court agrees with plaintiff when it states, "there is no showing that the District Director took any action or made any decision at all." (Plaintiff's main brief, p. 10.) Consequently, the court finds, as aptly observed by plaintiff, that "defendant's case is missing a major link in its chain of evidence." (Plaintiff's reply brief, p. 4.)

It follows from the foregoing that the reliquidations herein are illegal and void, and must, therefore, be set aside for the reasons stated.

Judgment will be entered herein accordingly.

(C.D. 4559)

C. J. TOWER & SONS OF BUFFALO, INC., a/c METCO, INC.
v. UNITED STATES

Metal products

ALLOY—NICKEL ALUMINUM—INTIMATELY UNITED

The statutory definition provides that an alloy is a metallic substance consisting of two or more metals . . . intimately united, usually by fusion. The constituent metals of an imported powder which were in a ratio of 80 to 83% nickel and 17 to 20% aluminum were manufactured abroad by a metallurgical process which deposited a nickel matrix around an aluminum core positioning the particles as close to each other as is possible, without being fused together or dissolved in each other when molten.

Held: The constituent metals in the imported powder are "intimately united" within the statutory definition of the term alloy. Though fusion is the usual method of forming an alloy, the statutory definition does not rule out other methods as long as the constituent metal substances are "intimately united", as they were in the imported merchandise.

Court No. 70/30847

Port of Buffalo

[Judgment for plaintiff.]

(Decided September 26, 1974)

Serko & Sklaroff (*Murray Sklaroff* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Frederick L. Ikenson* and *Wesley K. Caine*, trial attorneys), for the defendant.

RICHARDSON, Judge: The merchandise in this case, described on the invoice as "Composite PDR 82NI/AL18", was exported from Can-

ada in October, 1968, and classified in liquidation upon entry at Buffalo–Niagara Falls, N.Y. under TSUS item 657.50 as modified by T.D. 68–9 as articles of nickel, not coated or plated with precious metal, at the duty rate of 16 *per centum ad valorem*. It is claimed by the plaintiff-broker that the merchandise should be classified under TSUS item 620.32 as modified by T.D. 68–9 as nickel powders, free of duty.

It is admitted in the pleadings before the court that the powder is in chief weight and value of nickel, and that each particle of the powder consists of a core material of aluminum coated with nickel. In issue under the pleadings is plaintiff's allegation that the merchandise at bar is purchased and sold as composite powder, 82% nickel and 18% aluminum. However, prior to trial herein, and solely for purposes of its cross-motion, the defendant admitted this particular allegation in the complaint when the issues raised by the pleadings were before the court for disposition on plaintiff's motion for judgment on the pleadings and the defendant's cross-motion for the same relief. See *C. J. Tower & Sons of Buffalo, Inc., a/c Metco, Inc.* v. *United States*, 68 Cust. Ct. 377, 378, C.R.D. 72–11, 343 F. Supp. 1387 (June 15, 1972).

In C.R.D. 72–11 the court (Maletz, J.) denied both the aforesaid motion and cross-motion. In denying the motion, the court said:

> It was not alleged in the complaint, nor can the court conclude from the pleadings, that the merchandise is nickel or nickel alloy in a basic shape or form. For one thing, the imported merchandise is obviously not nickel *per se* in view of the presence of the aluminum. Further, absent admissions or receipt of additional facts, such as the method of production or manufacture, there is no basis upon which the court can determine whether the merchandise is an alloy within the meaning of schedule 6, part 2, headnote 2(a), that is, a "metallic substance consisting of two or more metals * * * intimately united, usually by having been fused together" or a sintered mixture of metal powders obtained by fusion or a heterogeneous intimate mixture obtained by fusion.

In connection with this phase of its opinion the court concluded that the provision for nickel applied only to an importation of nickel in a pure state down to a content by weight of 99.0 percent and in a basic shape or form, and that such provision, among others, could not be satisfied with the application of the component material of chief value concept.

In denying the cross-motion, the court said:

> Considering the present pleadings with the foregoing in mind, it cannot be said with any degree of certainty that plaintiff would be unable to offer proofs tending to establish the ultimate facts necessary to support its claim for classification of the merchandise as nickel powder under item 620.32, specifically, that it is a nickel alloy in a basic shape or form. This being the situation, plaintiff should not be foreclosed from the opportunity to present its proofs. . . .

Following disposition of the motions as aforesaid the case was brought to trial and evidence presented as to the method of manufacture of the subject merchandise and its uses, among other things, at the conclusion of which trial plaintiff moved for a decision by the court from the bench on the issue of whether plaintiff had established the imported merchandise to be a nickel alloy. The court, however, reserved decision in the case.

In its main brief plaintiff argues not only that the subject merchandise is a nickel alloy powder, but also that it is a nickel powder by reason of nickel being the component material of chief value, and that Judge Maletz' decision on plaintiff's prior motion excluding the component material of chief value theory from application under item 620.32 is erroneous. Defendant argues that Judge Maletz' rulings in C.R.D. 72–11 constitute the law of the case and should preclude inquiry by this court as to whether the imported merchandise is a nickel powder as distinguished from an alloy of nickel, that the merchandise is not an alloy of nickel because its two metals, while united, are not intimately united in that there has been no complete intermixture or fusion of the metals, and that perforce of the law of the case doctrine derived from the court's rulings in C.R.D. 72–11 plaintiff has not shown the imported merchandise to be in a basic shape or form.

The rulings by Judge Maletz are deemed the law of the case here for purposes of resolution of this case. When one judge sitting in a case establishes the law of the case, a second judge subsequently sitting in the case should normally follow the ruling of the first judge. See: *Williams* v. *New Jersey-New York Transit Co.*, 1 F.R.D. 138 (S.D.N.Y., 1940), and *Riss & Company* v. *Association of Western Railways*, 162 F. Supp. 69, 72 (U.S.D.C., D.C., 1958). And since the rulings in C.R.D. 72–11 foreclose plaintiff from arguing anew that the subject merchandise is nickel *per se*, or that the phrase "basic shapes and forms" is used in schedule 6, part 2, of TSUS in a cumulative context and not as a *limitation*, the only issue presently before this court for disposition is whether the imported merchandise has been shown to be an alloy of nickel in a basic shape or form.

The statutes pertinent to this issue read:

[classified]

Schedule 6, Part 3, Subpart G, Tariff Schedules of the United States, as modified by the Geneva (1967) Protocol to GATT and Other Agreements, and Presidential Proclamation, T.D. 68–9.

Subpart G headnote:

1. This subpart covers only articles of metal which are not more specifically provided for elsewhere in the tariff schedules.

* * * * * * *

657.50	Articles of nickel, not coated or plated with precious metal	16% ad val.

[claimed]

Schedule 6, Part 2, Subpart E, Tariff Schedules of the United States, as modified, *supra*.

Part 2 headnotes:

1. This part covers precious metals and base metals (including such metals when they are chemically pure), their alloys and their so-called basic shapes and forms, and, in addition, covers metal waste and scrap. Unless the context requires otherwise, the provisions of this part apply to the products described by whatever process made. . . .

2. Alloys.—. . . Alloys are metallic substances consisting of two or more metals, or of one or more metals and one or more non-metals, intimately united, usually by having been fused together and which may not have been dissolved in each other when molten; they include sintered mixtures of metal powders and heterogeneous intimate mixtures obtained by fusion, but do not include substances in which the total weight of the metals does not equal or exceed the total weight of the non-metal components.

* * * * * * *

Subpart E headnotes:

1. This subpart covers nickel, its alloys, their so-called basic shapes and forms, and also includes nickel waste and scrap.

2. Alloys of nickel: For the purposes of the tariff schedules, alloys of nickel are metals in which the nickel content is, by weight, less than 99.0 percent, but not less than any other metallic element. In the absence of context which requires otherwise, the term "nickel", wherever used in the tariff schedules, includes alloys of nickel.

* * * * * * *

Nickel powders and flakes:

* * * * * * *

620.32	Powders	Free

The evidence presented at the trial establishes that the imported merchandise is manufactured in Canada by the Sherritt Gordon Mines,

Limited, of Fort Saskatchewan, Alberta, Canada, who employs a patented hydrogen reduction method for transferring nickel particles onto suspended cores of aluminum particles, the details of which manufacturing method were described at length by a witness connected with Sherritt Gordon Mines. Under this method of production nickel ore is concentrated, then leached and boiled so as to yield a solution of pure nickel. The nickel is then deposited onto suspended aluminm particles in a nickel reduction autoclave. The aluminum powder utilized in the manufacture of the imported merchandise was sent to Canada by Metco, Inc. of Long Island, N.Y., who is the ultimate consignee of the merchandise at bar. And the ratio of nickel to aluminum in the resulting composite powder imported herein is on the order of 80 to 83% nickel and 17 to 20% aluminum.

The composite nickel/aluminum powder imported herein is marketed by the ultimate consignee as a consumable product known as Metco 404 for use in a flame spray process by means of which a metallic coating is applied to various metal surfaces. During the flame spraying process, the equipment for which is also marketed by Metco, the composite powder at bar is converted to nickel aluminide which forms a metallurgical bond and aftercoating to the surface of metals to which it is applied.

In describing the relationship between the nickel matrix and aluminum core of the imported powder, Dr. David John Ivor Evans, director of the research and development division of Sherritt Gordon Mines, testified (R. 43–45):

> Q. Would you tell us, please, the physical relationship between the nickel and the aluminum in the composite powder under discussion?—A. I think the photographs have shown this very clearly and—
>
> Q. Which photographs in particular, doctor? If you are speaking of photographs I would appreciate it if you took these and read the numbers off the back rather than any other notes that you may have.—A. I think these photographs illustrate to anybody engaged in working in the field of metallurgy, indicate very clearly that the nickel and the aluminum are as close as they can possibly be to one another.
>
> Q. Which photographs are you speaking of, doctor?—A. I am speaking in particular of Exhibit No. 9, and Exhibit No. 10.
>
> Q. No. Check the numbers on that.—A. Exhibit 11, sorry. These two indicate that there is no barrier between the nickel and the aluminum. They are as closely united as they can possibly be.
>
> Q. Would you refer to that as intimately united?
>
> * * * * * * *
>
> A. In my terminology, I would say they are very, very definitely intimately united. And there is no physical means that I am aware of for separating the nickel from the aluminum in this

> powder form. There is no physical means of making that separation. It is quite different from a mixed powder. If we had a powder of aluminum particles then they could be separated very easily either by a density difference or by magnetic separation. So, it is definitely not a mixed powder. The relationship between the two is much more intimate than of a mixed powder.

Evidence was adduced by the defendant bearing upon the industry usage and understanding of the term "alloy", and also of chemical, spectographic and X-ray analyses made on a sample of the merchandise at bar by the Government. Witnesses called on behalf of the Government, namely, a chemist in the employ of the Customs Service and an expert in the field of metallurgy, were of the opinion that the nickel and aluminum components of the imported powder could be separated by physical means. However, neither witness was able to testify concerning any such physical means of separation of the constituent metals.

It is settled law that where, as here, Congress has provided a clear definition of terms employed in a tariff statute the industry understanding of those terms does not determine the construction to be given them by the courts. *United States* v. *Stone & Downer Co.*, 274 U.S. 225 (1927). See also, *E. H. Bailey & Co.* v. *United States*, 10 Cust. Ct. 170, C.D. 746 (1943).

Plaintiff contends that the imported powder comes within the ambit of the statutory definition of the term "alloy" noted herein. And defendant, on the other hand, disavows that claim. Obviously, the key phrase in the statutory definition in question is the phrase "intimately united". It is clear that the language of the definition which immediately follows the phrase "intimately united" down to the word "but" is at best *directory* of the scope of the phrase "intimately united" and is not a *limitation* of the phrase. Hence, the question to be determined here is whether the nickel and aluminum constituents of the imported powder are "intimately united" even though they are not the product of fusion or sintering. Also, the definition indicates that the method of uniting the constituent parts is *usually* by fusion "together and which may or may not have been dissolved in each other when molten." The word "usually" does not mean "always" and admits the possibility of other ways of intimately uniting constituent parts of metal substances.

It appears to the court that the statutory definition in question is the product, at least in part, of the common understanding of the term "alloy", modified to reflect the desire of the framers of the language to broaden the scope of the term. See: Tariff Classification Study, Schedule 6, pages 86–88. Some of the words employed in the statutory definition of "alloy" derive almost verbatim from the definition of the term found in Webster's Third New International Dictionary on page 58 (1961 edition) which reads:

alloy . . . 3 a: a substance composed *of two or more metals intimately* mixed and *united usu. by* being *fused together and* dissolving *in each other when molten* . . . .[Emphasis added.]

But it seems that the framers of the definition in issue, in borrowing language from Webster, omitted the word *mixed* which followed the word *intimately* in Webster's definition, and, also modified the exemplar taken from Webster to indicate that particle fusion need not always result from mutual dissolution. Thus, it would appear that Congress did not intend that the statutory definition of "alloy" required any intermixture of the constituent metals. Consequently, the phrase "intimately united" must be regarded as being broader than the scope contended for by the defendant.

The court is of the opinion that the phrase "intimately united" as employed in the statutory definition of the term "alloy" was intended by Congress to apply to a combination of metals, among other things, in close contact, association, or connection with each other, and that interpenetration of the abutting surfaces of the combined metals was not prerequisite to inclusion of the combination within the definition. In the opinion of the court the statute puts emphasis on *unification*, and not on the *means* by which such unification is attained.

The evidence presented by the plaintiff in this case that a degree of unification of the constituent metals of the imported powder has been achieved satisfies both the general and specific requirements set out in the statutory definitions under consideration. A metal powder is of a basic shape or form, and there is no question in the court's mind but that the imported powder is in a basic shape or form. Both the core and the matrix were in powder form, and the end product resulting from their union remained in powder form. No additional proof would seem to be required of plaintiff at this point.

For the reasons stated, plaintiff's claim that the imported merchandise is a nickel alloy powder is sustained. Judgment will be entered accordingly.

(C.D. 4560)

THE RUBBERSET COMPANY
THE SHERWIN-WILLIAMS COMPANY ET AL. *v.* UNITED STATES

Paint brush knots and paint brushes

ASSEMBLED ARTICLES—BULK MATERIALS—ADDITIONAL PROCESSING ABROAD

Paint brush knots and paint brushes exported from Canada and entered at Buffalo-Niagara Falls, N.Y. were classified in liquidation under TSUS item 750.65 with duty allowances made for certain

components of American origin pursuant to TSUS item 807.00. Plaintiffs claim that additional duty allowances should have been made in liquidation pursuant to item 807.00 for the nylon filaments of American origin contained in the knots and brushes.

The evidence in the case discloses that the nylon filaments are exported from the United States to Canada in bundles packed in 25-pound cartons where the bundles are broken down into "batch" quantities and then into "machine-load" quantities, and then workers select filaments from the load by weight and size for a given knot or brush and thereafter join the selected filaments to other parts to produce a knot or brush.

Held: Where bulk materials like the bundled filaments in this case must be subjected upon exportation to a foreign country to additional processing in that country in order to render them usable for assembly with other parts of the imported articles such additional processing constitutes "further fabrication" of the exported components within the meaning of TSUS item 807.00 clause (a). *E. Dillingham, Inc.* v. *United States*, 60 CCPA 39, C.A.D. 1078, 470 F.2d 629 (1972) followed, and *General Instrument Corporation* v. *United States*, 60 CCPA 178, C.A.D. 1106, 480 F.2d 1402 (1973) distinguished.

Court Nos. 70/56365, 70/56364, 70/56363 and 70/56361

Port of Buffalo

[Dismissed.]

(Decided October 1, 1974)

Barnes, Richardson & Colburn (*Rufus E. Jarman, Jr.*, and *James F. Donnelly* of counsel) for the plaintiffs.

Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise of these cases which were tried jointly consists of paint brush knots and paint brushes exported from Canada and classified in liquidation upon entry at the port of Buffalo-Niagara Falls, N.Y. under TSUS item 750.65 at the duty rate of 18 *per centum ad valorem*, with duty allowances being made for a number of components of American origin pursuant to TSUS item 807.00. In question in these cases is the refusal of the district director of customs to make an allowance in duty under item 807.00 for the nylon bristles or filaments of American origin which are contained in the imported knots and brushes.

Plaintiffs contend that the nylon filaments meet the requirements of item 807.00 and are, therefore, entitled to the duty allowances provided for in that statute. Defendant contends that the filaments were

properly denied item 807.00 treatment because at the time of their exportation from the United States they required further fabrication prior to assembly in Canada.

Item 807.00, TSUS, provides for the payment of duty upon the full value of the imported article less the cost or value of the American products as to

> Articles assembled abroad in whole or in part of fabricated components, the product of the United States, which (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape, or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating, and painting.

The imported knots and brushes are made up of five or six parts. In the case of the knots these parts consist of nylon filaments, a center piece or plug, epoxy setting material, an aluminum insert, and a metal ferrule. In the case of the brushes a wooden handle is added to the other parts.

Both the knots and the brushes contain filaments of different lengths—some as many as six different sizes. And the filaments are tapered by about 33⅓% from the butt end to the tip or paint-applying end.

The record shows that the disputed filaments were exported to Canada from the United States in the form of bundles measuring about 2½ to 3 inches in diameter held together by rubber bands, one size to a bundle, and packed in cartons weighing approximately 25 pounds. Some of these bundles contain filaments which are raw, i.e., have not been tipped and flagged.[1] But prior to their meeting up with other parts of the knots and brushes the filaments are homogeneously mixed together either in Canada where one end is butt ground [2] or in the United States prior to exportation.

In Canada the mixed filaments are broken down into "batch" quantities and then into "machine-load" quantities. A worker takes a handful of the mixed filaments approximating the quantity required for a particular knot or brush. These filaments are placed in a balance scale, counterbalanced by a "control sample" of the desired weight. The worker adjusts the original estimate by adding or taking away filaments until an even balance is achieved.

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[1] "Tipping" is a process whereby the small end of the nylon filament is pointed by grinding wheels to remove bluntness; "flagging" is the splitting of the small ends with knives.

[2] A "grinding" operation performed on the butt end of the filament to roughen it, tending to produce a more solid bond with the epoxy which is applied during a later operation.

The weighed out filaments are slipped into a ferrule and butted down to a point where all the butt ends are uniform and even with the back of the ferrule. The ferrule is slipped back slightly, the filaments parted with a knife blade, and a wooden plug is inserted amongst the butt ends. The worker next uses a "push stick" to push the butt ends to the proper point in the ferrule, thus producing a space for the subsequent pouring of epoxy setting material.

An aluminum insert is then placed in the ferrule behind the nylon filaments, and a measured shot of epoxy is poured inside the ferrule. The epoxy seeps through the holes of the insert and into the filament butt ends. The knot is allowed to stand for a number of hours to permit hardening of the epoxy. And the finished knot is then wrapped and packed for shipment to the plaintiff in the United States.

In the case of the brushes, the brushes are made in the same manner as are the knots, except that the brushes are made from filaments received in Canada unmixed. A wooden handle is inserted into the ferrule and nailed. The top of the brush filaments is ground on a sanding belt and the brush run through a whip-out machine which removes loose filaments.

In support of its contention, plaintiffs argue, among other things:

> The articles exported were the individual filaments or bristle components; not bundles into which it was found expedient to group them for transportation. It is irrelevant that a bundle did not contain the precise number of bristles to make one or two or any other number of brushes. Certainly, unpacking and separating the bristles into the proper groupings is not a process of manufacture or other advancement in condition which would preclude applicability of Item 807.00.
>
> It is now well settled that articles are not precluded from 807.00 treatment merely because they are shipped in bulk. . . .

To this argument defendant replies:

> . . . the nylon filaments were exported from the United States in bundles. The component therefore, is not the individual nylon filaments, but rather the bundled form. *E. Dillingham, Inc.* v. *United States*, 60 CCPA 39, C.A.D. 1078, 470 F.2d 629 (1972).
>
> * * * * * * *
>
> . . . the nylon filaments at bar were subject to essential and necessary Canadian operations, all of which took place prior to their meeting up with the metal ferrule component.

On the instant facts the court agrees with the defendant's argument. In *E. Dillingham, Inc.* v. *United States*, 60 CCPA 39, C.A.D. 1078, 470 F. 2d 629 (1972), relied upon by defendant, the merchandise consisted of bulk fiber shipped to Canada together with fabric to be made up there into papermakers felt and returned to the States. In rejecting the appellant's (importer's) argument that the individual

fibers must be considered as a component of the assembled article for purposes of item 807.00, the appellate court said:

> . . . We believe that the fiber must be considered to be a component in the bulk, baled form, *en masse*, in which it left the United States.

And the court went on to state:

> Considering item 807.00 clause (a), we must determine whether operations performed on the exported component between its arrival abroad and the assembly, show that the component, as exported, was not "in condition ready for assembly without further fabrication." . . .

In the *Dillingham* case our appeals court was of the opinion that *assembly* did not occur until the fiber component came together with the fabric component. And the court there found the interim operations on the fiber to consist of at least *opening*, *oiling*, and *carding*, and held these operations to constitute "*further* fabrication" necessary to make the fiber component ready for assembly.

In the instant case the court is of the opinion that the facts at bar are analogous to those in the *Dillingham* case. Although the evidence at bar shows that the operations performed in Canada on the various knots and brushes involved herein were not uniform, nevertheless, all cases involved a breaking down into batch quantities, and then sorting into machine-load quantities by weight and size in order to produce the ingredients for any one knot or brush and thereby permit the joining of the selected filaments with other components. And without this essential processing the filaments as exported would not be capable of being assembled. This interim processing, in the court's view, constitutes "further fabrication" within the meaning of item 807.00 clause (a). The word "fabricate" from which the statutory word "fabrication" is derived means, among other things, "to form into a whole by uniting parts: CONSTRUCT, BUILD . . ." [Webster's Third New International Dictionary (1961 edition)].

The case of *General Instrument Corporation* v. *United States*, 60 CCPA 178, C.A.D. 1106, 480 F. 2d 1402 (1973), relied upon by the plaintiffs here, does not require a different conclusion on the instant facts. In the *General Instrument Corporation* case the bulk foil, paper, metal tabs, plastic insulating film, and cellophane tape, all entered directly into the assembly process (capacitors) right off the roll, and the cutting or severing was performed on the bulk materials only for the purpose of separating the completed assembly from the supply source. However, in the instant case as well as in the *Dillingham* case the bulk materials never entered into the assembly process in the form in which they were exported from the United States.

On the basis of the evidence of record the court concludes that the district director committed no error in disallowing item 807.00 treatment for the nylon filaments at bar in view of the non-compliance with item 807.00 clause (a). The court does not consider that clauses (b) and (c) of item 807.00 pose issues for decision. These actions must be dismissed.

Judgment will be entered accordingly.

(C.D. 4561)

MORRIS FRIEDMAN & CO. *v.* UNITED STATES

Candlesticks

Certain brass illuminating articles designed for use with one or more candles *held* to be properly subject to duty under item 653.35, Tariff Schedules of the United States, as claimed rather than under item 653.37, Tariff Schedules of the United States, as classified.

The question of commercial designation not being in issue, the common meaning of the term lamp is controlling. *United States* v. *Florea & Co., Inc.*, 25 CCPA 292, T.D. 49396 (1938).

In determining common meaning, the court may accept or reject testimony and may consult dictionaries or lexicographic authorities as an aid. *United States* v. *C. J. Tower & Sons of Buffalo, N.Y.*, 48 CCPA 87, C.A.D. 770 (1961).

The court in order to determine the intent of Congress in enacting a particular tariff provision may utilize the legislative history. *American Express Company* v. *United States*, 61 Cust. Ct. 208, C.D. 3573 (1968), *aff'd United States* v. *American Express Company*, 57 CCPA 100, C.A.D. 985 (1970).

Court No. 69/5352

Port of Philadelphia

[Judgment for plaintiff.]

(Decided October 21, 1974)

Allerton deC. Tompkins for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Joseph I. Liebman*, trial attorney), for the defendant.

FORD, Judge: This case involves the proper classification of certain brass illuminating articles designed for use with one or more candles.[1] They were assessed with duty at the rate of 17 per centum

[1] The merchandise is identified on the invoices as candlesticks, candleholders, Menorahs, lanterns and sanctuary lamps.

ad valorem under the provisions of item 653.37, Tariff Schedules of the United States, and primarily claimed to be subject to duty at the rate of 9 per centum ad valorem under item 653.35, Tariff Schedules of the United States. The pertinent portions of the provisions involved read as follows:

	Illuminating articles and parts thereof, of base metal:	
	* * * * * * *	
	Other:	
653.35	Table, floor and other portable lamps for indoor illumination, of brass	9% ad val.
	Other:	
653.37	Of brass	17% ad val.

Alternatively plaintiff contends for classification under item 654.00, Tariff Schedules of the United States, which provides for duty at the rate of 9 per centum ad valorem and reads as follows:

	Articles not specially provided for of a type used for household, table, or kitchen use; toilet and sanitary wares; all the foregoing and parts thereof, of metal:	
	* * * * * * *	
	Articles, wares, and parts, of base metal, not coated or plated with precious metal:	
	* * * * * * *	
	Of copper:	
654.00	Of brass	9% ad val.

The record upon which this case was submitted consists of the official papers which were received but not marked in evidence and the testimony of two witnesses called on behalf of plaintiff and one on behalf of defendant. In addition seven exhibits were received in evidence.

The first witness called on behalf of plaintiff was Mr. Isadore Serot, president of the actual importer, Terra Sancta Guild, whose business is the importation and sale of religious articles, lamps, gift items and household items which are sold throughout the United States. Mr. Serot identified the various exhibits.

The second witness called on behalf of plaintiff was Father Joseph B. Graham, a Catholic priest.

Defendant called on its behalf Mr. Charles M. Eckman, chairman of the board of Virginia Metalcrafters, manufacturers of candlesticks, chandeliers, fireplace equipment, trivets, plaques, antique reproductions and lamps. This company sells to customers in all 50 States.

Classification of merchandise under the superior heading "illuminating articles * * *" carries with it a presumption of correctness that the merchandise is illuminating articles. In addition, paragraph 6 of defendant's answer together with the testimony adduced at the trial establishes the involved merchandise to be illuminating articles. Inasmuch as the classified and claimed provisions fall under the same superior heading and the merchandise is admittedly brass (see paragraph 6 of defendant's answer), the issue to be determined is whether said articles are lamps and if so are they table, floor or portable lamps for indoor illumination.

The candlesticks, candleholders, Menorahs, lanterns and sanctuary lamps involved herein all use candles for illumination and are of a religious nature or contain religious characteristics or motifs used by Christian religions. The involved merchandise is not however inherently religious articles as were the candlesticks and candelabras involved in *Ignaz Strauss & Co., Inc.* v. *United States*, 56 Cust. Ct. 54, C.D. 2611 (1966), *modified*, 54 CCPA 125, C.A.D. 923 (1967). Neither party alleges nor was proof adduced as to the principle of commercial designation. Therefore, the common meaning of the term lamp must be ascertained. Common meaning is a question of law to be determined by the court. *United States* v. *Florea & Co., Inc.*, 25 CCPA 292, T.D. 49396 (1938). The meaning of a tariff term is presumed to be the same as its common or dictionary meaning in the absence of evidence to the contrary. In determining the common meaning the court may accept or reject evidence of such meaning and may consult dictionaries or lexicographic authorities as an aid. *United States* v. *C. J. Tower & Sons of Buffalo, N.Y.*, 48 CCPA 87, C.A.D. 770 (1961). The court in order to determine the intent of Congress in enacting the particular tariff provisions may utilize the legislative history.

In the case of *American Express Company* v. *United States*, 61 Cust. Ct. 208, C.D. 3573 (1968), *aff'd*, *United States* v. *American Express Company*, 57 CCPA 100, C.A.D. 985 (1970), the court reviewed the legislative history of the provision for illuminating articles. This court in its decision reviewed the Tariff Classification Study and the Brussels Nomenclature making the following comment:

> Additional support for classification of the chandeliers at bar as illuminating articles of base metal is also furnished by the Explanatory Notes to the Brussels Nomenclature, 1955. Since the Submitting Report, *supra*, states at page 8 that "The 'Brussels Nomenclature' and the 'Standard Industrial Classification Manual' exerted the greatest influence on the arrangement of the proposed revised schedules," those articles included in the equivalent sections of the Brussels Nomenclature are some evidence of the intent of Congress with respect to the classification of articles

under the Tariff Schedules of the United States. The pertinent heading number of the Brussels Nomenclature reads as follows:

83.07—LAMPS AND LIGHTING FITTINGS, OF BASE METAL, AND PARTS THEREOF, OF BASE METAL (EXCLUDING SWITCHES, ELECTRIC LAMP HOLDERS, ELECTRIC LAMPS FOR VEHICLES, ELECTRIC BATTERY OR MAGNETO LAMPS, AND OTHER ARTICLES FALLING WITHIN CHAPTER 85 EXCEPT HEADING NO. 85.22).

This heading covers lamps and lighting fittings of the following types:

* * * * * * *

(B) Lamps, including candlesticks and candelabra, using any other source of light (animal or vegetable oil, petrol, paraffin, coal, gas, acetylene, etc.).

* * * * * * *

The present heading covers in particular:

(1) Lamps and light fittings normally used for illumination of rooms, e.g.:—hanging lamps, bowl lamps, chandeliers, candelabara; ceiling lamps, wall bracket lamps; standard lamps; table lamps, desk lamps, bedside lamps; night lamps; candle brackets for pianos; water-tight lamps.

* * * * * * *

(3) Portable and vehicle, etc., lamps (other than those of headings 85.09 and 85.10), e.g.: hurricane lamps; stable-lamps; hand lanterns; miners' lamps; quarrymen's lamps; candlesticks; locomotive and railway rolling-stock lanterns, ships' lanterns and cycle lamps; headlamps, etc., for aircraft or trains.

Also supportive of the fact that candle illuminated articles are considered lamps are the definitions contained in various dictionaries and lexicographic source.

The Encyclopedia Americana (1973) defines lamp as follows:

lamp—any contrivance which affords a means of producing light, and sometimes heat, by electricity or by combustion of oils, gasses, *fats* [emphasis added] of flammable fluids. * * *

Webster's Third New International Dictionary Unabridged (1965):

candle—1: a long slender cylindrical mass typically of *tallow or wax* [emphasis added] containing a wick of loosely twisted linen or cotton threads made by dipping or by casting in a metal mold and burned to give light.

tallow—1: animal *fat* [emphasis added]: suet. 2a: the rendered fat of cattle and sheep that is white and almost tasteless when pure, that is in general harder than grease with a titer of above 40°C, that is composed of glycerides of fatty acids containing a large proportion of palmitic

acid and stearic acid, and that is used chiefly in making soap gylcerol, margarine, candles, and lubricants. b: any of various fats (as from other animals or from plants) resembling beef and mutton tallow * * *.

Webster's New International Dictionary Second Edition Unabridged (1949):

candelabrum—a: A candlestick, usually ornamental. b: A *lampstand* [emphasis added] of any sort, often large and highly ornamental.

candlestick—A utensil for supporting a candle, whether elaborately made or in the common form of a saucer with a socket at the center; specif., the seven-branched golden candlestick, or more properly *lampstand* [emphasis added], of the Jewish tabernacle; — used figuratively as a symbol for a church or some spiritual enlightener, with reference to the seven candlesticks of Revelation.

Webster's Third New International Dictionary Unabridged (1965):

lampstand—a pillar, tripod, or stand for supporting or holding a lamp.

lantern—1: a protective enclosure for a light with transparent openings and often a supporting frame or carrying handle: a portable lamp. 2: a giver of light.

Funk & Wagnalls Standard Dictionary (1963):

lampad—A lamp or torch; candlestick.

The foregoing definitions bring an illuminating article, which utilizes a candle, within the common meaning of the term lamp. The record testimony and a consideration of the seven exhibits are clearly supportive of this fact.

Exhibit 1 which was described on the invoice as a sanctuary lamp is used suspended from a hook to illuminate a holy object or icon according to witness Serot. It is used, based upon the experience of Father Graham, in a small chapel, before the Blessed Sacrament as a sanctuary lamp or on the side altar or in front of a statue or picture. It is designed to hold a 40-hour candle which burns for a period of devotion which was described by Father Graham as follows:

> A period of devotion before the Blessed Sacrament, at which time we have certain ceremonies in church and during which time, the people are invited to come into the church to make specific visits to the Blessed Sacrament and various things of that nature.

According to both witnesses exhibit 1 was portable since all that is required to move the article is to remove it from the hook. Such an article would not be considered a fixture which becomes part of realty since it may be removed without material injury to the realty. *Boise*

Ass'n of Credit Men v. *Ellis*, 26 Idaho 438, 144 P. 6, 9 (1914). The term portable also would bring exhibit 1 within the following definition as set forth in *Webster's Third New International Dictionary* (1965):

> portable—1: capable of being carried: easily or conveniently transported: light or manageable enough to be readily moved.

An examination of exhibit 1 together with the testimony establishes said exhibit as one not used on a table but which is used indoors and is portable.

Exhibits 2 and 6 are candleholders which are used on an altar at the time of the celebration of Mass and various other devotions, benediction or novenas. An altar according to the witness called on behalf of plaintiff is a table. The illumination of the candles during a religious ceremony has the significance described by Father Graham as follows:

> The significance of the candle is to symbolize the light of Christ. As the candle gives light to the area in which it is placed, so Christ gives light to the world. So, the significance of the candle would be as a representation of Christ as the light of the world.

Exhibits 2 and 6 are not suitable for use outdoors in their present condition. While witness Eckman called on behalf of defendant did state they could be used outdoors with a hurricane shade, the merchandise before the court does not have such addition. It is therefore apparent exhibits 2 and 6 are used on a table indoors and are obviously portable.

Exhibit 3, the Christ candleholder, according to witness Serot is used on a table usually in combination with other articles. The other articles according to Father Graham are Advent wreaths which contain four candles and are lit four times during the Advent season. Exhibit 3 would be placed in the center of the Advent wreath and lit to signify the birth of Christ. It would normally be used on a table in front of an altar or in the front of a classroom on a table. The exhibit has a quote from the scriptures and is in the form of a Greek cross. This exhibit is used on a table, is portable and used indoors.

Exhibit 4 is a floor candleholder which may be removed from its base for use in a procession within the church. This exhibit is therefore used on the floor or carried in a procession indoors.

Exhibit 5 is a Menorah similar to that used by people of the Jewish faith and is known by them as a Chanukah lamp according to witness Serot. Since many aspects of Christianity have roots in the Jewish religious observance, the witness indicated that the Menorah is becoming a tradition among Christians during the Advent season and

Christmas. The exhibit has the Star of David which is one of the earliest Christian symbols and the symbol IX embodied within the star which symbol is the monogram of Christ according to Mr. Serot. Father Graham has seen the exhibit used in classrooms and in Newman Centers [2] to further the spirit of ecumenism. In Judaism, the Menorah is the tree of life. In Catholic symbolism, the Star of David is also the symbol for the Blessed Virgin. They are used on a table indoors during a particular season of the year.

Exhibit 7, a lantern, Mr. Serot testified was used indoors either on a table or hung by a chain. It is used during a religious discussion or to light a picture or icon. Father Graham testified he has never seen one hung on a chain but has seen the lantern placed on a desk in classrooms during a reading from the scriptures. Exhibit 7 is inherently religious according to Father Graham, as indicated by the following:

> On one side, it has a fish, the ichthys, which is a Greek word referring to Christ. So, the fish is definitely symbolic of Christianity. On another side, it has the anchor, which is a symbol of hope, in the Christian church, and on another side, it has a star, which is symbolic of peace and light, and the symbol for love, I don't recognize, but the other symbols are definitely significant.

According to Father Graham, exhibit 7 could also be used on an altar or as a sanctuary lamp. A sanctuary lamp was described by Father Graham as follows:

> A lamp that is placed in the sanctuary of the church, by canon law, it is required to have them – a lamp burning 24 hours a day, in order to call attention to the fact that the Blessed Sacrament is there. By its light, it signifies the fact that the Blessed Sacrament is present in the church.

The defendant contends as did the testimony of its witness, Eckman, that a lamp is a device intended to provide illumination through the use of some energizing source or fuel such as electricity, gas or oil but not candles. A review of the testimony and exhibits as well as the legislative history and common meaning lends support to the view that defendant's position is too restrictive. Nor does defendant's position appear to fall within the intent of Congress in enacting the involved provision. Accordingly, I hold the imported merchandise to be properly dutiable as claimed under item 653.35, *supra*, at 9 per centum ad valorem. In view of this finding, it is unnecessary to consider plaintiff's alternate claim under item 654.00 since item 653.35 is more specific and therefore controlling.

Judgment will be entered accordingly.

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[2] A Newman Center is an institution run in conjunction with a nonsectarian college campus in order to bring a Christian or Catholic atmosphere for the Catholic students that go to that institution.

(C.D. 4562)

JOHN C. ROGERS & CO., INC., a/c HOEGANAES SPONGE IRON CORP. *v.* UNITED STATES

Fire brick—Abrasives

FIRE BRICK—COMMON MEANING

The tariff term "fire brick" in 1930 did not commonly include all articles used to resist heat, but only those heat-resistant articles used in the construction of lining for furnaces, ovens, and similar installations.

FIRE BRICK

Imported articles, consisting of hollow tubes, rings and disks of silicon carbide which are assembled into a chamber on a kiln car and filled with a mixture of iron ore, coke and limestone that is passed into a furnace to reduce the iron ore into sponge iron held not to be "fire brick." *John C. Rogers & Co., Inc., a/c Hoeganaes Sponge Iron Corp.* v. *United States*, 64 Cust. Ct. 12, C.D. 3952 (1970), *aff'd* 58 CCPA 104, C.A.D. 1012, 436 F.2d 1034 (1971) followed.

ABRASIVES

In order for an article to be classified under paragraph 1514 of the Tariff Act of 1930 as a manufacture of which an artificial abrasive is the component material of chief value, the article must be chiefly used as an abrasive. Thus, although the imported articles are in chief value of silicon carbide—which is an artificial abrasive within the meaning of paragraph 1514—they do not come within the purview of that paragraph since they are not used as an abrasive but rather are used as refractory items.

Court Nos. 64/20746, etc.

Port of Philadelphia

[Judgment for defendant.]

(Decided October 31, 1974)

Shaw and Stedina (*Charles P. Decm* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Martin L. Rothstein* and *John N. Politis*, trial attorneys), for the defendant.

MALETZ, Judge: These consolidated cases involve the proper tariff classification of articles invoiced as saggers, rings, and fire bricks that were manufactured in West Germany, exported from West Germany and Sweden, and entered at the port of Philadelphia. The imported articles consist of hollow tubes, rings and disks of silicon carbide. In use, the articles are assembled into a chamber on a kiln car and filled with a mixture of iron ore, coke and limestone. The loaded car is then

passed through a tunnel kiln where the iron ore is reduced into sponge iron.

The present importations are essentially the same as those involved in *John C. Rogers & Co., Inc., a/c Hoeganaes Sponge Iron Corp.* v. *United States*, 64 Cust. Ct. 12, C.D. 3952 (1970), *aff'd* 58 CCPA 104, C.A.D. 1012, 436 F.2d 1034 (1971) (hereafter referred to as "*Rogers I*"), the record in which case has been incorporated here. And as in *Rogers I*, the present importations were classified by the government as articles, wholly or in chief value of earthy or mineral substances, not specially provided for, dutiable at 15% ad valorem under paragraph 214 of the Tariff Act of 1930, as modified by T.D. 51802.

Plaintiff contends—as it did in *Rogers I*—that the imported merchandise is properly classifiable as "fire brick" and thus dutiable at 5% ad valorem under paragraph 201(a) of the 1930 Act, as modified by T.D. 54108. Additionally, plaintiff interposes a new alternative claim that if the articles are not "fire brick," they are properly classifiable as manufactures in chief value of artificial abrasive (*viz.*, silicon carbide) under paragraph 1514 of the 1930 Act, as modified by T.D. 52739, and therefore dutiable at the rate of 5% ad valorem.[1]

The relevant statutory provisions are as follows:

Classified under:

Paragraph 214, Tariff Act of 1930, as modified:

> Earthy or mineral substances wholly or partly manufactured and articles, wares, and materials (crude or advanced in condition), composed wholly or in chief value of earthy or mineral substances, not specially provided for, whether susceptible of decoration or not (except synthetic materials of gem stone quality, such as corundum and spinel, and articles and wares composed wholly or in chief value of such materials, and except marble chip or granito):
>
> If not decorated in any manner:
>
> * * * * * * *
>
> Other ---------- 15% ad val.

Claimed under:

Paragraph 201(a), Tariff Act of 1930, as modified:

Fire brick, not specially provided for---------- 5% ad val.

[1] In its complaint, plaintiff made a further alternative claim for classification of the imported merchandise under paragraph 1558 of the 1930 Act, as modified by T.D. 52739 as manufactured articles, not specially provided for. This claim, however, has not been briefed by plaintiff and is therefore deemed abandoned.

Alternatively claimed under:

Paragraph 1514, Tariff Act of 1930, as modified:

All the following, if not containing over 0.1% of vanadium, or over 0.2% of tungsten, molybdenum, boron, tantalum, columbium or niobium, or uranium, or over 0.3% of chromium:

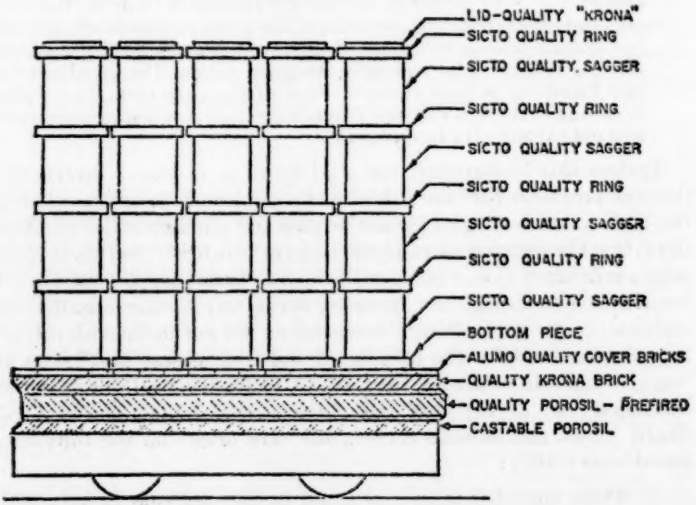
* * * * * * *

Manufactures of which corundum or artificial abrasive is the component material of chief value, not specially provided for (except wheels in chief value of corundum or silicon carbide)---------- 5% ad val.

I

The merchandise which, as previously noted, is essentially the same as that involved in *Rogers I* was aptly described by the appellate court in that case as follows (58 CCPA at 106):

> The imports consist of molded, silicon carbide tubes and interiorly flanged rings. The tubes are about 18 inches in length and 14 inches in outside diameter with ¾ inch thick walls. The flanged rings are adapted to receive the ends of the tubes and interlock them in stacks as illustrated in plaintiff's exhibit 7, which shows the tubes and rings assembled into furnaces or reaction chambers to be exteriorly heated, supported on a kiln car:



When assembled as illustrated above, except for the addition of the lids, the resulting structures are charged with a mixture of

iron ore, coke, and limestone, the lids are placed on their tops, and the loaded kiln car is introduced into a kiln in which the iron ore is reduced to sponge iron.

As pointed out by the trial court in *Rogers I*, the importations are used in the following manner (64 Cust. Ct. at 14):

> * * * The tubes and rings are often, but not always, used with a bottom plate * * * which is leveled with mortar on the platform of a kiln flat car. A tube is put on the bottom plate; a ring is put on the tube, then another tube, another ring, and so on until four tubes and four rings are pyramided on one another, into a so-called reaction chamber. Twenty such chambers are built up on a kiln flat car. The outside rings of each chamber touch on one another to provide a "good mesh of stability to the individual chambers," * * *. No mortar is used between the tubes and rings since "the material itself sweats a little and it bonds itself fairly nicely; enough for * * * [Hoeganaes] purposes." * * *
>
> Each of the chambers is next filled or charged with raw materials consisting of a hollow iron ore cylinder, about six feet tall, embedded in a mixture of coke and limestone. After the chambers are filled, they are topped with a lid. The kiln flat cars with the chambers charged and lidded, are then moved, like railroad cars, through a kiln tunnel. * * *. The kiln tunnel is a continuous operation; as one kiln car leaves the tunnel (the number of kiln cars in the tunnel at the same time is not a matter of record, but is apparently more than one), another enters the tunnel. It takes "in the order" * * * of 35 hours to heat the chambers built on the kiln cars and effect reduction, by coke, of the iron ore into fairly strong, but hollow porous cylinders of iron, which are pulled out of the various chambers by specially designed tongs. The residue coke and limestone is then vacuumed out of the chambers. The chambers, unless there is damage requiring repair, are again recharged and put through the tunnel cycle.

Against this background, the trial court in *Rogers I* determined that the provision for "fire brick" was a use provision and concluded, on the basis of lexicographic authorities and administrative publications, that the common meaning of the term "fire brick" in 1930 covered only a refractory (i.e., a nonmetallic heat-resistant article) used in the construction of linings for furnaces, ovens and similar installations and that, contrary to plaintiff's contention, did not include all refractory shapes "used for the purpose of resisting intense heat" such as "saggers and kiln furniture." 64 Cust. Ct. at 18. The trial court further concluded (*id.* at 19) that the importations did not "fairly and clearly" meet the essential criteria for "fire brick" on the following stated basis (*ibid.*):

> These imported tubes and rings, in the condition as imported, meet rather exacting specifications. * * * All that needs be done is to assemble the tubes and rings into a chamber which may, or

> may not be, akin to a furnace, oven, or exotic sagger. Assembling the tubes and rings into a chamber is not "fairly and clearly" like constructing a furnace or oven. Fire brick used in the construction of a furnace or oven also connotes a masonry unit of a sort. These tubes and rings are not used as masonry units. They are prefabricated units designed to fit together in an orderly manner and more than mere fire brick which, along with some special, but still standard shapes, are used as linings for furnaces and ovens. * * * There is no need to further expound on the distinctions. They are carefully lexiconed. Nowhere have we found that the word "assemble" is synonymous with the word "construction" or "construct". We are satisfied that these distinctions are valid, and that they are fatal to the classification of these imported tubes and rings as "fire brick".

In affirming, the appellate court held that "the lower court's determination that the common meaning of the term 'fire brick,' as of the effective date of the Tariff Act of 1930, did not cover custom-designed, major components of prefabricated structures, such as the importations at bar, is not clearly contrary to the weight of the evidence." 58 CCPA at 108. The appellate tribunal further pointed out that the trial court had concluded that the importations did not come within the common meaning of the term "fire brick" "because they are 'prefabricated units' designed to be *assembled* into the furnaces and not 'masonry units' designed to be used in *constructing* them." 58 CCPA at 110. [Emphasis in original.] On this aspect, the appeals court stated that "[w]e cannot say that * * * [the trial court's] conclusion that this distinction is in accord with the common meaning of the term 'fire brick' as of the effective date of the statute here involved is clearly contrary to the weight of the evidence." *Ibid.*[2]

II

In the present case, plaintiff called, in addition to the president of Hoeganaes, two expert witnesses to support its contention that all refractory shapes used for the purpose of resisting intense heat were, in 1930, commonly included in the term "fire brick." The first of these witnesses was Harold A. Heiligman, a self-employed refractory consultant, who had also testified for plaintiff in *Rogers I*. At the present trial, he testified that in 1930 the term "fire brick" meant a refractory

[2] The trial court also noted that "it is the consensus of the reference authorities, *supra*, that 'fire brick' comes in a variety of sizes and shapes. We have, therefore, eliminated size and shape as essential criteria for 'fire brick'. For the same reason we rule out limiting the term 'fire brick' to the generally accepted connotation of rectangular shaped brick, or shapes with one 'classically rectangular side' which is what defendant argues for." 64 Cust. Ct. at 18. As to this, the appeals court found that it was "unnecessary to comment on the Government's contention, rejected below, that, as of the effective date of the Tariff Act of 1930, the term 'fire brick' was commonly applied only to articles which were small and which had at least one planar, rectangular face." 58 CCPA at 108.

which was formed into a specified shape and then fired; that fire brick was made in a great variety of shapes including special shapes made to form rings and muffles; that in 1930, in characterizing articles as fire brick, no distinction was made between articles that were used as masonry articles and custom-designed articles that were assembled into refractory structures; that the term "fire brick" included custom-designed major components of prefabricated structures; and that fire bricks were not always mortared together (e.g., the bottoms in open hearth furnaces were put in dry, as were many refractory roofs).

Mr. Heiligman further testified that the importations in issue are not describable as kiln furniture [3] but rather are fire brick; and that the fact that the importations (i) are in the shape of tubes and rings, (ii) are custom-designed and prefabricated, (iii) are stacked on top of each other, and (iv) are not mortared together, does not affect their classification as fire brick.

Additionally, the witness testified that the tubular articles before the court could be termed saggers as that word was known in 1930; that some people called the articles saggers, while others did not since it was a matter of definition; and that he personally would not call them saggers or retorts. He stated that the purpose of the imported articles was to form reaction chambers to contain the material being fired and to protect it from kiln gas during the reduction process.

Finally, Mr. Heiligman testified that his definition of fire brick included crucibles,[4] retorts [5] and kiln furniture.

Plaintiff's second expert witness was Professor Frederick H. Norton, a consultant in the general field of ceramics. His career began in 1923 when he was employed by the Babcock & Wilcox Company (one of the largest refractory manufacturers in the country) to develop new products and help in the methods of manufacture. After eight years with Babcock & Wilcox, he was appointed to the faculty of the Massachusetts Institute of Technology as head of the Division of Ceramics, a position he held until his retirement in 1961. He has received numerous honors and awards in the ceramics field and has published four books and over 100 articles in that field. One of his published books is *Refractories* which is generally considered to be the authoritative work on that subject.

Relating his testimony to the period around 1930, he stated that a refractory was a nonmetallic material capable of withstanding high

[3] Kiln furniture is defined as supports and containers for ceramic ware while it is being fired. See Norton, *Refractories* (3d ed., 1949) p. 527.

[4] The witness defined the term "crucible" as used in the refractories industry as a cylindrical shaped vessel, wider at the top than at the bottom, which will normally hold liquid metals of some kind.

[5] In the refractory industry, a retort, according to the witness, is a refractory vessel in which a metallurgic reaction takes place and the products of the reaction gases are conducted away.

temperatures, and that refractories can be divided into two general groups as follows: (1) fire brick which is formed to a specific size and shape in the plant and fired to stabilize that shape and size and then shipped to the customer to be used; and (2) granular refractories such as castables, plastic refractories, mortars, etc., which are shipped in bulk. He then defined the term "fire brick" as a refractory article which is formed to a specific size and shape and then fired to stabilize it. In other words, in his opinion all shaped refractories are commonly referred to as "fire brick." He believed that the majority of persons in the industry used that definition, but agreed that a minority took a narrower view. In this connection, he said that there were a few people in the industry who defined fire brick as small fired refractories which had at least one rectangular side of specified dimensions and included arches and wedges which had such dimensions. However, he indicated that this was a very narrow definition and that the general opinion in the industry was that "fire brick" was defined in much broader terms, in accordance with his own previously stated definition.

The witness stated that the terms "refractory brick" and "fire brick" are often used as synonymous terms and that the word "brick" was an abbreviated term to describe both types of brick. Continuing, he testified that in 1930, fire brick was made in a great variety of sizes; that some—such as glass tank refractories—weighed as much as a ton; and that fire brick was made in a great variety of shapes, including tubes and rings.

The witness did not agree that fire brick is always used to construct or line furnaces or kilns; instead, he stated, it is used for other purposes such as in kiln furniture, as piles for supporting a floor, etc. He added that mortar is not always employed in the use of fire brick; that in order to be fire brick, the refractory did not have to be a masonry unit; and that in 1930, custom-designed articles which were major components of refractory structures were describable as fire brick.

Professor Norton further testified that he would consider the silicon carbide refractories before the court to be "fire brick" and that they would have been so considered as that term was understood in the refractory industry in 1930. In his opinion, the fact that the imported articles were custom-designed and assembled into reaction chambers by being stacked on top of each other without the use of mortar does not affect their classification as fire brick. In short (as previously indicated) he believed that all refractory shaped articles were commonly referred to as fire brick. Thus he testified that kiln furniture was describable as fire brick; that a retort—which he defined as a refractory vessel or container inside of which some reaction is taking place—

was commonly referred to as a fire brick. Similarly, he stated that a crucible—which he defined as a refractory container used to contain a liquid such as metal or glass—was commonly referred to as a fire brick. He added that a crucible was also commonly referred to as a crucible, and that the terms "fire brick" and "crucible" are virtually interchangeable, but that when crucibles are shown in a catalogue, they usually appear under the heading "fire brick."

On cross-examination, however, Professor Norton conceded that although his book *Refractories* (3d ed., 1949) contained (at p. 527) a discussion of kiln furniture—which (as mentioned previously) was described by Professor Norton as fire brick—nowhere in that discussion did he use the term "fire brick" or "brick" to describe that class of merchandise. Beyond that, notwithstanding that Professor Norton had testified that a retort was commonly referred to as "fire brick," that section of his book discussing retorts (pp. 531–2) made no reference to them as either "fire brick" or "brick." To like effect, although Professor Norton testified that a crucible was commonly referred to as a "fire brick," his book's discussion of crucibles (pp. 532–4) again made no reference to them as "fire brick" or "brick."

By contrast, his book in discussing so-called standard shapes and special shapes, such as cupola blocks, rotary-kiln blocks, circle brick, and rectangular tile of fireclay (pp. 523–7), refers to them as refractory brick, fire brick or brick.

Questioned as to why his book referred only to the latter types of articles as refractory brick or brick and did not refer to articles such as kiln furniture, retorts and crucibles as fire brick or brick, Professor Norton responded as follows (R. 225):

> Well, I think it is understood by anybody in the industry. That is just an abbreviation of "fire brick" and the word is left off. It is an adjective and it isn't always put in place. I think it is understood by anybody in the industry that this is made of a type of fire brick, but it has a specific name.

Further on this aspect, when it was brought out that his book referred to kiln furniture merely as "kiln furniture," Professor Norton responded: "Well, *the whole book is about fire brick* and you have to assume that fire brick has specific names." (R. 219) [Emphasis added.] [6]

On additional cross-examination, Professor Norton testified that he recognized A. B. Searle as an authority on refractories and agreed that in the first (i.e., 1931) edition of his own book he had referred to Searle's book, *Refractory Materials: Their Manufacture and Uses*

[6] The fact, however, is that a good deal of Professor Norton's book, *Refractories*, deals with granular refractories, such as plastic refractories, mortars, etc.—which, as the witness made clear in his testimony, are not fire brick. See e.g., chapters XI through XIV.

(1924), as "probably the most complete book on refractories * * *." (R. 235) The witness' attention was then directed to the following statement at p. 288 of the Searle book:

> The *shape* of fireclay bricks must be as accurate as possible. They usually measure 9 inches by 4½ inches by 3 inches or 2½ inches, with a small allowance for the mortar, in order that two-header bricks may lie exactly on a stretcher when the wall is built.
>
> The variations from the average or specified measurements should not exceed 2 per cent.; some specifications are even more stringent than this. The reason is that irregularly shaped bricks require more mortar and cannot be laid with thin joints; and as firebricks nearly always perish first at the joints, if these are irregular or if the bricks are laid carelessly, they do not form a durable structure. * * * [Emphasis in original.]

Professor Norton was then asked whether he believed that in the foregoing paragraphs Searle was using the term "fireclay brick" in the same broad, all encompassing sense in which he (Norton) had defined it, or was using the term in a narrower sense. To this Norton responded: "A broad sense. That would apply to any shape of brick." (R. 236)

Professor Norton further testified that in use the imported articles might be considered to act as a retort in the reduction of sponge iron. However, he believed that the articles would be described more accurately as a reaction chamber since a retort almost always has an opening on which certain products are distilled out of the reaction, whereas such distillation does not take place in the imported articles.

Defendant called as an expert witness Maurice A. Kohler, the New York District Sales Manager of the Babcock & Wilcox Company who has had extensive experience in the refractory field beginning in 1930 when he was 15 years of age. He testified that during the period from 1930 to the present there has been no change in the manner in which the term "fire brick" has been used in the industry and that a "fire brick" is a rectangular object made of clay or other matter which is made to withstand high temperatures without deformation. With regard to size and shape, he testified that to be fire brick, two of the three dimensions must have the same measurements as a standard brick size (i.e., 9 by 4½ by 2½ inches or 13½ by 4½ by 2½ inches). Thus, arches and wedges are included so long as these dimensional requirements are met. He further testified that in order that an article constitute fire brick, it must be used to construct or line furnaces or kilns.

According to the witness, the term "special shape" as used in the refractory industry refers to a shape that does not meet any of the dimensional requirements previously mentioned and is not considered to

be a fire brick. Thus, articles such as kiln furniture, retorts and tubes are not fire brick.

He stated that there is a difference in moisture content between fire brick and special shapes; that they were dried out quite differently, with fire brick put through dryers, while special shapes were dried in hot furnaces; that they were burned in entirely different manners; and that the manner in which bricks and special shapes were formed also determined whether a refractory was a fire brick or not. In this latter connection, he said, in 1930 shaped pieces such as cylinders were hand molded, whereas fire brick was for the most part either hand pressed, pressed out on a machine press or wire-cut. He also stated that there was a difference in pricing as between fire brick and other shapes. For example, the normal 9 and 13½ inch series brick were always sold at a price per thousand, while anything over that size was sold by the piece.

In Mr. Kohler's opinion, the imported articles in question were not describable in 1930 as fire brick because they did not conform to the 9 or 13½ inch dimensional requirements and failed to meet any of the other requirements. He added that in his 35 years' experience in selling refractories in the United States, Canada and Puerto Rico, he has never seen articles such as those here in issue bought, sold or referred to as fire brick.

On cross-examination of Mr. Kohler, it was developed that a catalogue of his employer, Babcock & Wilcox, issued some years ago, contained the following statements, among others:

> Other services where Allmul Firebrick have established a record of long, economical service include, malleable iron air furnaces, hot metal mixers, non-ferrous melting furnaces, butt-weld pipe furnaces, burner blocks for all sorts of furnaces, kiln furniture and piers in ceramic and enameling furnaces, glass tanks, tunnel kilns and high temperature ceramic kilns.
>
> * * * * * * *
>
> Because of their high hot-load strength and their other refractory qualities, B&W Allmul, 80, and Junior Firebrick are used to form car tops and kiln furniture for many types of ceramic furnaces. Other uses of B&W Firebrick in the ceramics industry include linings for rotary kilns, and high temperature tunnel and periodic kilns.
>
> * * * * * * *
>
> Installations of B&W Firebrick will be found in almost every industry which utilizes heat in its manufacturing processes. B&W Allmul, 80, and Junior Firebrick are used for complete linings, partial linings in heavy duty areas, piers, checkers, burner blocks and special applications in a wide variety of industrial furnaces and other heat enclosures.
>
> * * * * * * *

Special Shapes of B&W Allmul, 80, and Junior Firebrick are fabricated to close tolerances for easy installation in the field.[7]

Mr. Kohler testified that he disagreed with the foregoing statements in the catalogue to the extent that they referred to all the foregoing articles as fire brick. He said that the statements were prepared by the advertising department and that quite often its advertising statements were in error and had to be corrected. He recalled that at one time he called one of these errors to the attention of the advertising department and that the advertising department indicated it would correct it. Instead, he testified that the entire catalogue was eliminated some five or six years ago and that the personnel responsible for it were dismissed. Presently, he said, the catlogue is in the process of revision, but had not as yet been reissued.

III

From the foregoing, it is evident that as in *Rogers I* the testimony of plaintiff's expert witnesses at the present trial was in direct conflict with that of defendant's expert witness. Thus, similar to the situation in *Rogers I*, plaintiff's expert witnesses expressed the opinion that in 1930 *all* heat-resistent refractory shapes, which would include kiln furniture, retorts and crucibles, were commonly referred to as "fire brick." Defendant's witness, on the other hand, indicated that the term "fire brick" applied only to those heat-resistant refractory shapes which had at least one rectangular face of specified dimensions and had to be used to construct or line furnaces or kilns.

It is to be added that at the present trial the testimony of the expert witnesses for both sides was somewhat impaired on cross-examination. For example, while Professor Norton (as well as Mr. Heiligman) testified on direct examination that refractory shapes such as kiln furniture, retorts and crucibles were commonly referred to as "fire brick," it was developed on cross-examination of Professor Norton that his book *Refractories*—which, as previously indicated, is an authoritative work—did not so refer to them. And while defendant's expert witness Kohler testified on direct examination that the term "fire brick" was limited to refractory shapes which had at least one rectangular face and was used only to construct or line furnaces or kilns, cross-examination brought out the fact that a catalogue of his company, Babcock & Wilcox, used the terms "Allmal Firebrick," "Junior Firebrick" and "B&W Firebrick" in a much broader sense.

The short of the matter is that the testimony of the expert witnesses as to the common meaning of the term "fire brick" is inconclusive. Nor

[7] Professor Norton testified that the information contained in this catalogue accorded generally with his understanding of the refractory industry's practice in 1930.

do I find helpful their conflicting testimony as to whether or not various articles are called "fire brick." For, as the trial court made clear in *Rogers I*, the provision for "fire brick" is a use provision and hence "it is not how an article is called but how it is used that determines whether it is [fire] brick * * *." 64 Cust. Ct. at 18.

In view of these considerations, particular reliance must necessarily be placed on the lexicons. And on this phase, I am in accord with the conclusion of the trial court in *Rogers I*, based on lexicons and administrative publications, that "the essential criteria of a 'fire brick' are that it is a heat resistant article used in the construction of linings for furnaces, ovens, and similar installations." 64 Cust. Ct. at 16. Among the authorities cited in *Rogers I* which I believe are persuasive in reaching this conclusion are New Century Dictionary and Cyclopedia, 1913 edition; Glossary of Mining and Mineral Industry, U. S. Department of Interior, Bureau of Mines, Bulletin 95, 1920; Webster's New International Dictionary, 1927 edition; Materials Handbook, George S. Brady, second edition, 1931; Encyclopaedia Britannica (1947), volume 9, p. 266. 64 Cust. Ct. at 16–17. Beyond that, there are other lexicons, in addition to those cited in *Rogers I*, which similarly define "fire brick" as an article used for lining furnaces. Such lexicons include Funk & Wagnalls New College Standard Dictionary, 1947; The Winston Dictionary, Encyclopedic Edition, 1957; and Britannica World Language Edition of Funk & Wagnalls Standard Dictionary, 1963.[8]

Not without significance too is the recent decision in *Pittsburgh Plate Glass Company* v. *United States*, 73 Cust. Ct. 49, C.D. 4553 (1974). In that case, so-called "tank blocks" of various sizes and shapes, mostly rectangular (1 by 2 by 3 feet) weighing between 800 and 900 pounds, which were used in constructing the lining in the lower portion of a float-glass furnace, were held to be "refractory bricks"[9] and thus within the purview of item 531.27 of the tariff schedules. In reaching this conclusion, the court (per Newman, J.) relied on *Rogers I* to find that "refractory bricks" (fire brick) are heat-resistant articles used in the construction of linings for furnaces, ovens and similar installations. The court further found that since, under the holding in *Rogers I*, size and shape are not essential criteria for fire brick, and since a float-glass furnace is a similar installation to an oven or furnace, the "tank blocks" in issue came within the common meaning of the term "refractory bricks" (fire brick). Finally,

[8] Although these lexicons were published after 1930, they are relevant since it is undisputed that the common meaning of the term "fire brick" has not changed appreciably over the years. See *Rogers I*, 58 CCPA at 109, note 5.

[9] It was undisputed that the terms "fire brick" and "refractory brick" are synonymous. *Id.* at 53, slip op. at 6, note 2.

the court pointed out (73 Cust. Ct. at 56, slip op. at 11–12) that the fact that the imports were generally bought, sold and known in the trade as "blocks" rather than as "bricks" did not preclude their classification as "refractory bricks"—this on the basis stated in *Rogers I* (64 Cust. Ct. at 18) that "it is not how an article is called but how it is used that determines whether it is [fire] brick * * *."

In sum, it is concluded that since the importations in question are not articles used in the construction of linings for furnaces, ovens, or similar installations, they are not classifiable as "fire brick" under paragraph 201(a) of the Tariff Act of 1930, as modified. Therefore, plaintiff's claim under this provision must be rejected.

IV

We turn next to plaintiff's alternative claim that the importations are classifiable under paragraph 1514 of the Tariff Act of 1930, as modified, as manufactures in chief value of artificial abrasive (*viz*, silicon carbide). With respect to this claim, the parties agree that the importations are in chief value of silicon carbide and that silicon carbide was one of the artificial abrasives contemplated by paragraph 1514 of the Tariff Act of 1930. On the basis of these considerations, plaintiff insists that the importations are covered by paragraph 1514 since that paragraph, according to plaintiff, is unconditional on its face and therefore covers any manufactured article, whatever its nature or use, which is composed in chief value of an artificial abrasive.

There is a basic difficulty with this argument, however. The difficulty is that paragraph 1514 is a use provision and in order to be classified thereunder, the silicon carbide must be chiefly used as an abrasive. And the fact is that the silicon carbide here involved is not used as an abrasive; to the contrary, it is chiefly used as a refractory item. See e.g., *United States* v. *C. J. Tower & Sons*, 35 CCPA 19, C.A.D. 365 (1947); *United States* v. *C. J. Tower & Sons*, 35 CCPA 22, C.A.D. 366 (1947).

The rule that a substance may be classified as an abrasive only when it is chiefly used as an abrasive was well stated in *Crystal* v. *United States*, 5 Ct. Cust. Appls. 489, T.D. 35148 (1915). In that case, the court held that powdered glass used on the heads of matches or sides of matchboxes was not classifiable under paragraph 432 of the Tariff Act of 1909 (the predecessor paragraph to paragraph 1514)[10] for the following reasons (*id.* at 490–1):

> The rule is well settled, we take it, that when articles are provided for under a tariff designation descriptive of their use, the operation of such a provision, when brought in competition with

[10] Paragraph 432 covered, among other things, "Crude artificial abrasives."

some other provision adequately describing the goods, is limited to things which are chiefly used for the purpose mentioned. * * *

Powdered glass, therefore, can not be classified under paragraph 432 unless it be chiefly used as an abrasize, and whether it is so used depends on whether it acts as an abradant and serves a real abrasive purpose when employed as a friction agency on match heads and match boxes.

In our opinion, an abrasive is a substance designed and fitted to be used for the rubbing, grinding, or wearing away of particles from the surfaces of wood, metal, stone, and other hard materials, in order to produce smoothness, a polish, an edge, or other desired modifications of the surface, or a reduction in the dimensions of the thing subjected to the action of the abradant. The true, final, and distinctive purpose of an abrasive is not to produce friction or heat but to create new surfaces by rubbing or grinding away older ones. * * *

From what has been said, it is apparent that plaintiff's alternative claim for classification of the importations under paragraph 1514 is without merit.

V

In summary, the court overrules plaintiff's claims for classification of the imported articles (1) as "fire brick" under paragraph 201(a) of the Tariff Act of 1930, as modified; and (2) alternatively, as manufactures in chief value of artificial abrasive under paragraph 1514 of the Tariff Act of 1930, as modified. Judgment will be entered accordingly.

(C.D. 4563)

FLAGSTAFF LIQUOR COMPANY *v.* UNITED STATES

Opinion and Order on Defendant's Motion for Summary Judgment and To Dismiss on Jurisdictional Grounds

Court No. 71-12-02057

Port of New York

[Motion granted.]

(Dated October 31, 1974)

Wilentz, Goldman & Spitzer (*Steven T. Kessel* of counsel) for the plaintiff.
Carla A. Hills, Assistant Attorney General (*Gilbert Lee Sandler*, trial attorney), for the defendant.

NEWMAN, Judge: Defendant has moved for summary judgment and dismissal of this civil action, brought pursuant to 28 U.S.C. § 2632(a) (1970).

Plaintiff, a wholesaler of domestic and imported wines, spirits and alcoholic beverages, imported from Great Britain 3,660 cases of "Beefeater Dry Gin", which were entered for warehousing at the New York region subport at Perth Amboy, New Jersey on December 17, 1968. The 3,660 cases were assessed with duty under the provision for "gin" in item 168.35 of the Tariff Schedules of the United States, and additionally were assessed with an internal revenue tax as "distilled spirits" under the provisions of 26 U.S.C. § 5001(a) (1964).

Plaintiff claims that the duty and tax were assessed on too great a quantity of merchandise; the rates of duty and tax are not in dispute. Specifically, plaintiff contends that pursuant to 26 U.S.C. § 5008(a) (1964) it is entitled to a refund of the duty ($2,470.50) and tax ($28,822.50) assessed on 915 cases because they were stolen from its bonded warehouse in Perth Amboy, New Jersey, allegedly "without [the] connivance, collusion, fraud, or negligence" of the importer, its employees or agents. Plaintiff also demands a judgment for interest, attorney's fees and costs of the suit.

Defendant's motion for summary judgment and dismissal of the action is grounded on the contention that the court lacks jurisdiction for the reason that plaintiff failed to file a protest within sixty days after liquidation in accordance with 19 U.S.C. § 1514 (1964).[1] Plaintiff concedes that it failed to file its protest within sixty days after liquidation; but opposes defendant's motion, contending that defendant is "barred" from raising the statute of limitations under section 1514 "by virtue of the fact that an agent of the government misrepresented material facts and induced plaintiff into not pursuing its statutory right to relief within the time limits specfied by law".

I have concluded that defendant's motion should be granted.

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[1] 19 U.S.C. § 1514 reads as follows:

"Except as provided in subdivision (b) of section 1516 of this title (relating to protests by American manufacturers, producers, and wholesalers), all decisions of the collector, including the legality of all orders and findings entering into the same, as to the rate and amount of duties chargeable, and as to all exactions of whatever character (within the jurisdiction of the Secretary of the Treasury), and his decisions excluding any merchandise from entry or delivery, under any provision of the customs laws, and his liquidation or reliquidation of any entry, or refusal to pay any claim for drawback, or his refusal to reliquidate any entry for a clerical error discovered within one year after the date of entry, or within sixty days after liquidation or reliquidation when such liquidation or reliquidation is made more than ten months after the date of entry, shall, upon the expiration of sixty days after the date of such liquidation, reliquidation, decision, or refusal, be final and conclusive upon all persons (including the United States and any officer thereof), unless the importer, consignee, or agent of the person paying such charge or exaction, or filing such claim for drawback, or seeking such entry or delivery, shall, within sixty days after, but not before such liquidation, reliquidation, decision, or refusal, as the case may be, as well in cases of merchandise entered in bond as for consumption, file a protest in writing with the collector setting forth distinctly and specifically and in respect to each entry, payment, claim, decision, or refusal, the reasons for the objection thereto. The reliquidation of any entry shall not open such entry so that a protest may be filed against the decision of the collector upon any question not involved in such reliquidation".

1.

The record comprises the official papers forwarded to the court by the Regional Commissioner pursuant to 28 U.S.C. § 2632(f) (1970) and rule 3.2(f); the pleadings; an affidavit executed by Stephen Rineberg, plaintiff's vice president, submitted in opposition to defendant's motion; and an affidavit by Joseph A. Farrell, Port Director for United States Customs at Perth Amboy, New Jersey, submitted by defendant in response to Rineberg's affidavit.

The following material facts are not in dispute:

This case concerns entry number PA–199, dated December 17, 1968, which covered 3,660 cases of gin. It appears that 915 of the cases were stolen from plaintiff's premises while under bond on December 23 or 24, 1968. The theft was reported by plaintiff to the appropriate customs officials on December 24, 1968. In subsequently liquidating the entry on July 2, 1969, the Regional Commissioner made no allowance in duty or tax for the 915 stolen cases. Plaintiff failed to file a protest against such liquidation within sixty days thereafter, as prescribed by 19 U.S.C. § 1514.

On April 27, 1970, or 299 days after liquidation, plaintiff filed a claim for a refund of taxes (Internal Revenue Form 843), citing 26 U.S.C. § 5008(a) and asserting: "Claim for refund is made pursuant to 26 U.S.C. Sec. 5008(a). The tax was erroneously paid by the taxpayer because of inadvertence and ignorance of the applicable laws and regulations. The tax should not have been paid because the merchandise was lost by theft without the connivance, collusion, fraud or negligence of the taxpayer or its employees or agents. The loss has not been indemnified against or recompensed by the responsible insurance carriers though claim for same has been made".

On June 1, 1970, or 334 days after liquidation, plaintiff filed an application for an allowance in duty for theft (Customs Form 4315).

The above-mentioned claim and application were denied by the Regional Commissioner in a letter to plaintiff dated April 12, 1971 on the ground that no protest had been filed within sixty days after liquidation pursuant to section 1514. In that letter, the Regional Commissioner further advised plaintiff: "The importer (Flagstaff Liquor Co.), or their authorized agent may protest this decision by filing a protest on Customs Form 19 in quadruplicate within ninety (90) days after the date of this letter in accordance with Section 1514(a)(7), Title 19, United States Code".

Within ninety days of the Regional Commissioner's letter (June 17, 1971), plaintiff filed a protest against the denial of its claims for refund of duty and tax. The protest was denied on July 16, 1971 on the basis that the Regional Commissioner's original decision was found

to be correct. Moreover, the Regional Commissioner commented that plaintiff's claim was "[n]ot correctible under Section 1520(c)(1) Title 19 USC".

Thereafter, on December 14, 1971 plaintiff filed a summons initiating this action against the denial of its protest of June 17, 1971.

2.

Plaintiff concedes it is not entitled to relief pursuant to section 1520(c) for "clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of a law". As previously mentioned, plaintiff further admits that it failed to file its protest within sixty days after the liquidation, as required by 19 U.S.C. § 1514. However, plaintiff insists that defendant should be "barred" from asserting such sixty day statute of limitations under section 1514 because the failure to file a timely protest was due to "misrepresentations" by a customs official. Hence, while not articulated as such, it is clear that plaintiff relies upon the familiar doctrine of equitable estoppel.

3.

At this juncture, it should be pointed out that the alleged "misrepresentations" were made during a conversation between Mr. Rineberg, plaintiff's vice president, and Mr. Farrell, the Port Director at Perth Amboy, New Jersey. As noted, the affidavits of both Rineberg and Farrell are part of the record in these proceedings.

The conversation between Rineberg and Farrell occurred at plaintiff's premises on December 24, 1968 as a consequence of plaintiff's discovery in the morning that a container holding 915 cases of the imported gin had been stolen. Previously, Rineberg had transacted customs business with Farrell, and the latter impressed Rineberg as "a person who exercised considerable authority with respect to the operations of the Port of Perth Amboy, and a person who was knowledgeable in the area of customs and import regulations" (Rineberg affidavit, paragraph 5).

Rineberg related to Farrell the then known facts concerning the theft of the gin, and "asked Mr. Farrell to explain Flagstaff's obligations to the United States Government with respect to the missing cases of gin" (Rineberg affidavit, paragraph 7). Continuing, Rineberg averred that the "misrepresentations" of Farrell, which allegedly deterred plaintiff from filing a timely protest, are as follows: (1) "Flagstaff was under an absolute duty to pay both alcohol excise tax and customs duties on the missing cases of gin" (paragraph 8); (2) "the United States Government would proceed against Flagstaff's warehouse operator and/or carrier's bond in the event that Flagstaff

failed to or refused to make payment" (paragraph 9); (3) "if the United States proceeded against said bonds, Flagstaff's position as an approved bonded warehouse operator and carrier would be jeopardized" (paragraph 10); and (4) "Farrell [did not] advise me that I had a statutory right to protest the payment of taxes or duties" (paragraph 13).

Rineberg further argues: "[I]t appeared that the obligation to pay such taxes and duties was absolute and not subject to any challenge or discretionary action on the part of any government official" (paragraph 12); and "Mr. Farrell's statements and those of the Customs House to me led me to believe that not only was Flagstaff obligated to pay said taxes and duties but that Flagstaff had no recourse to challenge Mr. Farrell's assertions" (paragraph 17).

It also appears from Rineberg's affidavit that it was not until March 1970 that plaintiff consulted its attorneys, and "was advised that it was conceivable that there existed a statutory right to make claims for refund of the customs duties and alcohol excise taxes paid on the missing 915 cases of gin" (paragraph 15).

In summary, as expressed in its brief: "[P]laintiff was misled into believing that it must pay the contested taxes and duties, that to dispute said taxes and duties would result in serious adverse consequences to plaintiff, and that in any event, there existed no procedure by which a contest could be made".

I have determined, however, that as a matter of law the averments in Mr. Rineberg's affidavit do not establish any basis for an equitable estoppel predicated upon misrepresentation.

4.

First, plaintiff has failed to show wherein any of the statements attributed to Farrell were either erroneous or misleading. On the contrary, they appear to be substantially accurate.

As of December 24, 1968, when the conversation occurred, there had been no administrative or judicial determination to abate the duty and tax on the stolen cases of gin, and thus at that time plaintiff was indeed "under an absolute duty" to pay duty and tax on the 915 cases of gin. And although the subject of protesting the assessment did not arise in the conversation, it is of course fundamental that payment of liquidated duties and taxes was a condition precedent to filing a protest and to confer jurisdiction in this court. *The A. W. Fenton Co., Inc.* v. *United States*, 55 CCPA 54, C.A.D. 933 (1968); *Marvin Schnitzer Machinery Co.* v. *United States*, 62 Cust. Ct. 71, C.D. 3680 (1969); *Korlis, Ltd.* v. *United States*, 56 Cust. Ct. 365, C.D. 2660 (1966); *A. Zerkowitz & Co., Inc.* v. *United States*, 48 Cust. Ct. 437, Abs. 66724 (1962); *A.*

Zerkowitz & Co., Inc. v. *United States*, 48 Cust. Ct. 438, Abs. 66725 (1962); *A. Zerkowitz & Co., Inc.* v. *United States*, 48 Cust. Ct. 439, Abs. 66726 (1962); *Samoca Distributing Co.* v. *United States*, 48 Cust. Ct. 392, Abs. 66633 (1962). Indeed, had plaintiff withheld payment of duty and tax for the stolen merchandise, upon which no allowance had been made, there can be little doubt that in due course the Government would have proceeded against plaintiff's bonds.

Whether plaintiff's status as a bonded cartman and warehouseman would have been "jeopardized", while somewhat conjectural, is not a "misrepresentation". In this connection, it may be noted that licenses to operate as a bonded warehouseman or cartman are revocable for "reasonable cause", and particularly for negligence or carelessness in the handling of goods. See 19 CFR §§ 19.3(c) and 21.8(a) (1967).

Second, there is no averment in Rineberg's affidavit that Farrell stated that plaintiff had no right to file a protest. Rather, plaintiff relies upon Farrell's silence concerning plaintiff's statutory right to file a protest pursuant to section 1514. The general rule is: "estoppel by silence" does not ordinarily arise where there is no affirmative duty to speak. See 31 C.J.S. Estoppel § 87, p. 485; 53 C.J.S. Limitations of Actions § 25, p. 964. Significantly, it is well settled that customs officials are not required to advise importers as to the nature and extent of their rights.

In *Wilmington Shipping Company* v. *United States*, 52 Cust. Ct. 642, A.R.D. 174 (1964), *aff'd*, 52 CCPA 89, C.A.D. 864 (1965), the appeals for reappraisement were dismissed for untimeliness in that they were prematurely filed before appraisement. In opposition to defendant's motion to dismiss the appeals for untimeliness, plaintiff relied upon conversations between its customhouse broker and the customs officials, whereby the latter erroneously advised the former that the appraisement had been made on a particular date (October 28, 1960) at the values set forth in the appraiser's written notice of probable unpaid duties. Such notices advised the plaintiff that the appraiser *contemplated* appraisement at certain increased values; but in point of fact and law, appraisements were not completed until a later date (November 10, 1960) when notices of appraisement were mailed to plaintiff.

In affirming the decision and judgment of the trial court dismissing the appeals as prematurely filed, the appellate term held (52 Cust. Ct. at 649):

> It is regrettable that customs officials told plaintiff's agent that the merchandise had been appraised on October 28, 1960, and advised him to file appeals for reappraisement at that time. However, written notices of appraisement were sent to plaintiff when the appraisement was completed, and plaintiff could then

have investigated and could then have filed timely appeals. *It is well settled that customs officials are not required to advise importers as to the nature and extent of their rights. Jacksonville Paper Co.* v. *United States*, 30 CCPA 159, C.A.D. 228; *F. B. Wilcon* v. *United States*, 13 Cust. Ct. 96, C.D. 876; *United States* v. *Kenneth Kittleson* and *E. W. Rollow*, 43 CCPA 31, C.A.D. 605. In the *Jacksonville* case, the court said:

> That the importer was "influenced" by the officials to make the entry seems to be true, and the importer's agents evidently obtained the impression that such entry was "required" as a condition precedent to obtaining the merchandise, but it could not have been legally "required," and had importer tendered proper bond all its statutory rights could have been preserved by its following the defined statutory procedure. [Pp. 164, 165.]

There are certain legal precepts that may not be overlooked. It is well settled that there is no inherent right to sue the United States, that such right is permissible, and that a suit against the United States can be maintained only pursuant to the terms laid down in the grant of permission. Congress may attach to its consent to sue such conditions as it deems proper. *Reid* v. *United States*, 211 U.S. 529; *United States* v. *Loeb & Schoenfeld Co.*, 7 Ct. Cust. Appls. 380, T.D. 36961; *ex parte Bakelite Corporation*, 279 U.S. 438; *Munro* v. *United States*, 303 U.S. 36; and others.

Appellant has failed to bring itself within the statutory grant of permission conferred by section 501. [Emphasis added.]

Additionally, it must be observed from Rineberg's affidavit that the affiant asked Farrell to explain plaintiff's "obligations" to the Government and not its "rights" (paragraph 7). Hence, for this additional reason I see no justification for holding that Farrell was obliged to advise Rineberg that plaintiff could protest the assessment.

Third, plaintiff was not reasonably misled concerning its right to file a protest. Here, it may be stressed that plaintiff is an experienced importer who retained a customhouse broker to make entries (Dorf International, Ltd.), and plaintiff also is a licensed bonded warehouseman and cartman.

Fundamentally, in the law of estoppel, one claiming to have been misled through lack of knowledge of certain facts must have been without convenient or ready means of acquiring such knowledge, and must have exercised reasonable diligence to acquire knowledge of the true facts. "If he conducts himself with a careless indifference to means of information reasonably at hand * * * he cannot invoke the doctrine of estoppel". 31 C.J.S. Estoppel § 71, p. 435. It has also been stated: "[I]n order to serve as the basis of such an estoppel [to plead the statute of limitations], the fraud must be of a character to prevent

inquiry, to elude investigation, or otherwise to mislead the party having the cause of action, and in this connection it has been held that plaintiff is under a duty to exercise reasonable care and diligence". 53 C.J.S. Limitations of Actions § 25, p. 965.

Unfortunately plaintiff, who now professes to have been greatly concerned on December 24, 1968 about its right to protest the assessment of duty and tax on the stolen gin, apparently did not consult either its broker (Dorf) or its attorneys respecting the matter until March 1970, nearly fifteen months after the theft. Apropos, therefore, are the following observations of our appellate court concerning an importer's duty to protect its rights in *Jacksonville Paper Co.* v. *United States*, 30 CCPA 159, 164, C.A.D. 228 (1943), *cert. denied*, 320 U.S. 737 (1943):

> The importer unfortunately did not see fit to confer with counsel and receive advice as to his legal rights before making the entries and *it was a mistake on the part of Mr. McGehee to assume that it was the duty of the customs officials fully to advise him.* They could not, of course, have bound the Government by advising him nor was the importer bound by their statements. *It was the duty of importer to protect its legal rights*, which, as the trial court pointed out, it readily might have done by making a test case of the April, 1936, entry. [Emphasis added.]

Finally, even assuming *arguendo* that Farrell gave Rineberg wrong advice which reasonably misled plaintiff into not filing a timely protest, as a matter of law the doctrine of equitable estoppel may not be invoked against the United States under such circumstances.

In *Wilmington Shipping Company*, the Government was not barred from asserting that plaintiff's appeals for reappraisement were prematurely filed notwithstanding plaintiff's reliance in filing the untimely appeals upon the erroneous advice of the customs officials.

A long line of authorities in other federal courts have rejected the application of equitable estoppel against the United States, despite the fact that misinformation or erroneous advice of the Government's agents or employees deterred the plaintiffs from filing timely actions. "[I]t is well established that the government is not estopped by such acts of its agents as the giving of improper advice". *Rock* v. *United States*, 279 F. Supp. 96, 101 (S.D.N.Y. 1968)

In a "rider" attached to its summons, plaintiff contends that the "dictates" of Mr. Farrell were "beyond his authority". But "[l]ack of authority is fatal to a claim of estoppel based upon the conduct of an agent. All who deal with any agent of the United States are charged with notice of his lawful authority". *United States* v. *Certain Parcels of Land*, 131 F. Supp. 65, 73 (S.D. Calif. 1955). "The law is also well established that the United States, as a sovereign, cannot be

estopped by unauthorized acts of its agents or employees". *Jackson* v. *United States*, 234 F. Supp. 586, 588 (E.D.S.C. 1964). "And when statutes of limitations are fixed by Congress they may not be lengthened by estoppel or waiver by agents of the United States". *Kindrew* v. *United States*, 352 F. Supp. 277, 278 (M.D. Fla. 1972), *aff'd*, 479 F. 2d 49 (CA 5, 1973).[2]

Applicable here are the following comments of the District Court in *Kindrew* (352 F. Supp. at 278):

> The Plaintiff's own lack of diligence in purposefully pursuing the cause within the required statutory period results in a forfeiture of the cause of action. This plightful ending was precisely described in Martin v. Grace Line, Inc., *supra:*
>
> > "Such unfortunate results will probably occur so long as there are statutes of limitations. However, statutes of limitations exist to protect other important interests, which must also be accommodated."

In *Ritter* v. *United States*, 19 F.2d 251 (W.D.Pa. 1927), *aff'd*, 28 F.2d 265 (CCA 3, 1928), the Government was held not estopped to raise plaintiff's failure to file a written claim for a refund of an overpayment of income tax within the statutory time limit, notwithstanding the fact that a revenue field agent misled plaintiff into believing that an oral claim made to him at the audit was sufficient compliance with the applicable statutes and regulations. There, the Circuit Court of Appeals stated (28 F.2d at 267):

> * * * It is unfortunate and to be regretted that the plaintiff finds himself in the position in which his negligence, misunderstanding, or the unauthorized statement of the filed agent, Timberlake, places him, but the sovereign government may not be sued, except upon its consent, and then only upon the conditions under which it has consented to be sued, even though they be purely formal. * * *

In *Jackson*, the District Court held, in an action under the Federal Tort Claims Act, that the Government was not estopped from raising the two year statute of limitations where the failure of the incompetent plaintiff's son to file a timely action on behalf of the plaintiff was the result of certain unauthorized statements of a Government officer.

Further, in *Taylor* v. *Flemming*, 186 F. Supp. 280 (W.D.Ark. 1960), plaintiff failed to file proof of support within the time specified by statute, which proof was a condition precedent to recovery of dependent parent's insurance benefits under the Social Security Act. The District Court held that the Government was not estopped to assert plaintiff's ineligibility for benefits, although plaintiff had relied upon erroneous information given her on inquiry at a social security office prior to the expiration of the time for filing proof of support. The court commented (186 F. Supp. at 284):

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[2] To the same effect see *Kruhmin* v. *United States*, 177 F. 2d 906, 907 (CA 3, 1949).

As noted above, the plaintiff contends that she made an inquiry at the Social Security Office in Sacramento, California, concerning the proof of support prior to July 31, 1951, and she was informed that she did not have to file such a proof. In plaintiff's brief her attorney argues as follows:

> "Since the United States Government can act only through its agents, it would be shocking to allow the United States Government to misinform an individual as to her rights, and then absolve itself from an obligation to that individual because of her reliance upon the misinformation."

It is apparent that plaintiff is attempting to assert some type of estoppel against the defendant; however, no cases are cited in support of this position. If Mrs. Taylor did rely to her detriment upon such a statement, it is indeed unfortunate. However, the Government cannot be estopped from insisting upon performance of statutory conditions precedent by the unauthorized acts of an employee of a local Social Security Office. * * *

Similarly, in *Flamm* v. *Ribicoff*, 203 F. Supp. 507 (S.D.N.Y. 1961), the Government was held not to be estopped from raising the defense of plaintiff's failure to comply with the statutory requirements for recovery of social security benefits despite the circumstances that the social security office gave "misinformation" concerning the time when application for benefits should have been filed. The court stated (203 F. Supp. at 510):

> Secondly, plaintiff claims that "misinformation" was given to Mrs. Berger's son-in-law over the telephone in July 1956 by an employee of the midtown Social Security office and that she delayed the filing of her written application until December 1958 in reliance thereon. She urges that defendant is therefore estopped by the acts of the Government employee from raising the defense of failure to comply with the statute and regulations so as to limit her benefits to one year prior to the filing of her 1958 application.
>
> It is by no means clear that Mrs. Berger's son-in-law was in fact misinformed by the Social Security office and that what he received from that office was not merely sound advice that the claimant should have accurate information available as to her date of birth. But even assuming that he did receive "misinformation" on which Mrs. Berger acted to her detriment, it is plain that estoppel will not lie against the Government under these circumstances. *Parties dealing with the Government are charged with knowledge of and are bound by statutes and lawfully promulgated regulations despite reliance to their pecuniary detriment upon incorrect information received from Government agents or employees.* Failure to comply with the applicable statute and regulations precludes recovery against the Government "no matter with what good reason" the claimant believed she had come within the requirements. *Estoppel will not lie regardless of the financial hardship "resulting from innocent ignorance." Federal Crop Insurance Corp.* v. *Merrill*, 332 U.S. 380, 68 S.Ct. 1, 92 L.Ed. 10; *Walker-Hill Co.* v. *United States*, 162 F.2d 259 (7 Cir. 1947), cert.

den. 332 U.S. 771, 68 S.Ct. 85, 92 L.Ed. 356; *James* v. *United States*, 185 F.2d 115, 22 A.L.R.2d 830 (4 Cir. 1954). [Emphasis added.]

Again, in *Commissioner of Internal Revenue* v. *Duckwitz*, 68 F.2d 629 (CCA 7, 1934), the Circuit Court of Appeals affirmed the holding of the Board of Tax Appeals rejecting the taxpayer's contention as to estoppel of the Government to claim a deficiency income tax because of the careless and unofficial expression of opinion by the solicitor in the Bureau of Internal Revenue.

Other cases wherein the courts have held that estoppel is inapplicable against the United States where the statute of limitations has run are: *Claremont Aircraft, Inc.* v. *United States*, 420 F.2d 896, 898 (CA 9, 1970); *Legerlotz* v. *Rogers*, 266 F.2d 457, 459 (CA D.C. 1959), *cert. dismissed*, 362 U.S. 938 (1960); *Bono* v. *United States*, 113 F.2d 724, 725 (CCA 2, 1940). See also *Taxation: Reliance on advice of Government officials.* 33 Cornell Law Quarterly 607, 612, which concludes: "In short, equitable estoppel is but rarely successfully invoked by a taxpayer against the Government".

Plaintiff relies heavily upon *Scarborough* v. *Atlantic Coast Line R. Co.*, 202 F.2d 84 (CA 4, 1953), and *Fravel* v. *Pennsylvania R. Co.*, 104 F. Supp. 84 (D. Md. 1952), wherein both courts held that fraud barred the defendant railroads from relying upon the statute of limitations under the Federal Employers' Liability Act. Plaintiff's reliance on those cases is misplaced, inasmuch as in each case the defendant was a private party and not the United States. No decision is cited by plaintiff wherein a statute of limitations for actions against the United States was tolled, or the principle of equitable estoppel applied, on the ground that the plaintiff received erroneous advice from a Government official.

Accordingly, it is plain that the doctrine of equitable estoppel is inapplicable in this case, and that defendant is not barred from raising the statute of limitations as a defense.

5.

As previously mentioned, plaintiff seeks a refund of both the *duty* and internal revenue tax assessed upon the stolen gin. However, 26 U.S.C. § 5008(a), upon which plaintiff predicates its right to relief, mentions only internal revenue tax.[3]

[3] 26 U.S.C. § 5008(a) provides so far as pertinent:

"(a) Distilled spirits lost or destroyed in bond.

(1) Extent of loss allowance.

No tax shall be collected in respect of distilled spirits lost or destroyed while in bond, except that such tax shall be collected—

(A) Theft.

In the case of loss by theft, unless the Secretary or his delegate finds that the theft occurred without connivance, collusion, fraud, or negligence on the part of the proprietor of the distilled spirits plant, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them * * *".

In *Chicago Heights Distributing Company* v. *United States*, 55 Cust. Ct. 254, C.D. 2586 (1965), imported Scotch whiskey was stolen while in the custody of a bonded cartman, who was acting as the importer's agent in transferring the merchandise from the place of unlading to the importer's bonded warehouse. The question before the court was whether the plaintiff was entitled to a refund of customs duties and internal revenue taxes assessed upon the merchandise in liquidation. Plaintiff urged that it was entitled to an abatement of duties and taxes assessed against the stolen merchandise because the theft occurred without negligence, on the part of the cartman, relying upon 19 U.S.C. § 1001, paragraph 813 and 26 U.S.C. § 5011, in support of its contention. Defendant argued that there were no provisions of the customs or internal revenue laws authorizing abatement of duties and taxes, as claimed by plaintiff, and that even if there were such laws, the negligence of the cartman precluded abatement as a matter of law.

Respecting abatement of duties, the court commented (55 Cust. Ct. at 257–258):

> * * * It appears that no statutory provisions have been made for the abatement of duties for a theft of imported merchandise not occurring while the merchandise is in the appraiser's stores (see 19 U.S.C.A., section 1563). "Congress has not provided that the Government shall be an insurer of imported goods while in customs custody . . . ," *Mills & Gibb Corporation* v. *United States*, 13 Ct. Cust. Appls. 72, 74, T.D. 40933. A broader provision for such relief does exist, however, with respect to abatement of *internal revenue taxes* by reason of the theft of distilled spirits under 26 U.S.C.A., section 5008 (section 5008, Internal Revenue Code of 1954, as amended). * * *
>
> *We do not think that section 5008 is applicable, however, to customs duties as claimed by plaintiff perforce of paragraph 813.* * * * [Emphasis added.]

Consequently, insofar as the *duty* aspect of this case is concerned, 26 U.S.C. § 5008(a) does not confer any jurisdiction upon this court to grant relief. Respecting plaintiff's application for allowance in duty (Customs Form 4315) filed on June 1, 1970 and denied on April 12, 1971, the provisions of 19 U.S.C. §1563(a) (1964) were applicable.[4] In *Camilo E. Rosello, Inc.* v. *United States*, 63 Cust. Ct. 454, C.D. 3935 (1969), plaintiff filed with the Collector of Customs an application on Customs Form 4315 for a refund of duties paid on

[4] 19 U.S.C. § 1563(a), on which plaintiff's application for a duty allowance (Customs Form 4315) was apparently based, reads in relevant part as follows:

> "(a) In no case shall there be any abatement or allowance made in the duties for any * * * loss * * * sustained by any merchandise while remaining in customs custody, except that the Secretary of the Treasury is authorized, upon production of proof satisfactory to him of the loss or theft of any merchandise while in the appraiser's stores, * * * to abate or refund, as the case may be, the duties upon such merchandise, in whole or in part, and to pay any such refund out of any moneys in the Treasury not otherwise appropriated * * *. The decision of the Secretary of the Treasury as to the abatement or refund of the duties on any such merchandise shall be final and conclusive upon all persons".

an importation of plywood destroyed in a fire. The application was denied by the Collector, and following the liquidation of the entries, plaintiff protested the decision. With reference to section 1563(a), the court stated (63 Cust. Ct. at 456):

> And as for relief under subsection (a) of section 1563 the court is powerless to review any determination of the Secretary of the Treasury made thereunder even if plaintiff has brought itself within the ambit of that statute. The decision of the Secretary of the Treasury under that statute with respect to duty refunds is final and conclusive upon all persons and not subject to review by or in this court. *Delia Failde* v. *United States*, *supra*. [51 Cust. Ct. 170, Abs. 67894 (1963).] Under the circumstances, the protest herein is overruled.

See also: *Armour and Company* v. *United States*, 29 Cust. Ct. 296, C.D. 1482 (1952); *Battat Imp-Export Co., Inc.* v. *United States*, 43 Cust. Ct. 397, Abs. 53502 (1959).

Plainly, then, insofar as plaintiff seeks judicial review of the Government's denial of its application for an allowance in duty, this court would lack jurisdiction, even assuming a timely protest were filed.

6.

The decision of the Regional Commissioner regarding the quantity of gin upon which duty and tax would be assessed (and to include the stolen gin in the dutiable quantity) mefged in the liquidation, and became final and conclusive upon all parties under 19 U.S.C. § 1514, since no protest was filed within sixty days of liquidation. *Clover Linen Corporation* v. *United States*, 26 Cust. Ct. 275, C.D. 1335 (1951); *Parrott & Co., Frank P. Dow Co., Inc.* v. *United States*, 30 Cust. Ct. 133, C.D. 1511 (1953). See also *United States* v. *Westco Liquor Products Co.*, 38 CCPA 101, 107, C.A.D. 446 (1951). Accordingly, defendant is entitled to summary judgement and dismissal of this action as a matter of law, and its motion is hereby granted.

(C.D. 4564)

A. N. DERINGER, INC. *v.* UNITED STATES

On Defendant's Motion for Summary Judgment

Port of St. Albans, Court No. 72–12–02490 on American goods returned (revolvers)

[Motion granted.]

(Dated November 5, 1974)

Barnes, Richardson & Colburn (*Joseph Schwartz* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Wesley K. Caine*, trial attorney), for the defendant.

RICHARDSON, Judge: In this case the defendant moves for summary judgment dismissing the action, contending that there is no

triable issue in the case, and that as a matter of law judgment should issue in defendant's favor. The merchandise in issue consists of .38 special caliber revolvers imported from Canada and classified in liquidation upon entry at the port of St. Albans, Vermont, under TSUS item 730.19 or as modified by T.D. 68–9, at the duty rates of 22 *per centum ad valorem* plus $1.40 each of 19.5 *per centum ad valorem* plus $1.26 each, depending upon date of entry. It is alleged in the complaint that the revolvers should be classified as American goods returned, duty free, under TSUS item 800.00.* In its answer the defendant denies this and all other material allegations of the complaint.

In the moving papers defendant asserts as fact that the merchandise in issue is described on the entry papers as ".38 special caliber Smith & Wesson revolvers", that said revolvers were imported into the United States from Canada in the years 1965 and 1968 for the account of Century Arms, Inc. of St. Albans, Vermont, who purchased them as used .38 caliber Smith & Wesson revolvers, had them "rechambered" to become .38 special caliber Smith & Wesson revolvers, and imported them into the United States as such under Department of State license numbers 00751, 12333, and 13896, that on each of the aforesaid licenses was endorsed the statement [or its equivalent] "Revolvers substantially transformed in accordance with Section 121.02(b), International Traffic of [sic] Arms", and that customs Form 4467 required by 19 C.F.R. § 10.1(a) for merchandise claimed to be American goods returned, was never filed with respect to said revolvers.

These assertions of fact are not refuted by the plaintiff. However, plaintiff asserts as fact that the "rechambering" of the revolvers was not an advancement in value or an improvement in condition, and that the customs officials at the port of entry waived the filing of customs Form 4467.

According to the moving papers the "rechambering" operation to which the imported revolvers were subjected involved the use of a chambering tool to machine out the cylinder bores to .38 special dimension for the accommodation of higher caliber cartridges. The effect of rechambering on the revolvers is stated in the opposing papers as follows:

> The rechambering deepens the original chamber to the extent necessary to accommodate the greater length of the .38 special cartridge, but does not alter the original .38 chamber mouth diameter which is approximately .010 inch oversize. Because of

*An alternative claim for classification of revolvers under TSUS item 806.20 was abandoned; and the reference in the complaint to revolvers is deemed by the parties to cover only the .38 special caliber revolvers and not any other type of revolver which may have been included in the importation.

this, upon firing the .38 special cartridge, excessive expansion or deformation of the cartridge case head occurs, which may cause splitting or rupturing of the case, also escape of powder gases. This would destroy any further utility of the cartridge case for reloading.

The deepening of the original chamber produces a rough, annularly grooved surface which interferes with proper extraction of the fired cases. This is caused by radial expansion of the case into the grooves, which is not entirely compensated for by after-firing contraction. Therefore, when an attempt is made to extract the fired case, there is interference between the grooves and the expanded portion of the case, making extraction too difficult from a practical user's point of view.

Insofar as subsequent use of the original .38/200 cartridge is concerned, the deepening of the chamber produces approximately one-half inch of free travel of the .38 bullet in a passage approximately .015 inch too large in diameter for the bullet. This, in combination with the rough finish just mentioned, produces excessive deformation and disorientation of the projectile, resulting in greatly reduced accuracy. [Affidavit dated May 31, 1974 of George C. Nonte, Jr., Maj. Ord. Ret.]

The defendant contends on this motion that the rechambering operation precludes the plaintiff from claiming free entry for the revolvers under item 800.00 because the rechambering in effect transformed the revolvers into foreign articles, calling attention to 22 U.S.C.A., section 1934 (a) and (b) and regulations of the Department of State promulgated thereunder. The plaintiff on the other hand does not dispute the fact that the rechambering of the revolvers resulted in their substantial transformation. Plaintiff contends that the rechambering operation was designed to render the revolvers incapable of further military use, and in fact resulted in the revolvers being of lesser commercial value, and, therefore, not disqualified from free entry because of the rechambering. Additionally plaintiff contends that compliance with the customs regulations concerning the filing of customs Form 4467 was waived by the customs officials at the port of entry because the revolvers were die stamped "Made in the U.S.A.". Thus, plaintiff maintains that the facts underlying its contentions herein pose issues that should only be resolved by trial.

Section 1934(b) reads in relevant part:

(b) As prescribed in regulations issued under this section, every person who engages in the business of manufacturing, exporting, or importing any arms, ammunition, or implements of war, including technical data relating thereto, designated by the President under subsection (a) of this section shall register with the United States Government agency charged with the administration of this section, and, in addition shall pay a registration fee which shall be prescribed by such regulations. Such

> regulations shall prohibit the return to the United States for sale in the United States . . . of any military firearms or ammunition of United States manufacture furnished to foreign governments by the United States under this chapter or any other foreign assistance program of the United States, whether or not advanced in value or improved in condition in a foreign country. *This prohibition shall not extend to similar firearms that have been so substantially transformed as to become, in effect, articles of foreign manufacture.* [Emphasis added.]

It appears from documents attached to the moving papers that the imported revolvers were formerly .38 caliber Smith & Wesson revolvers of United States manufacture which were shipped to New Zealand under the Lend Lease Act of 1941. Firearms of this caliber were included in the Munitions List designated in regulations promulgated by the Department of State in the years 1965 and 1968 pursuant to section 1934(a). These regulations require the issuance of a license from the State Department as a condition precedent to the importation of listed munitions into the United States, including those of American origin that have been so substantially transformed abroad as to become in effect articles of foreign manufacture.

As to what constitutes substantial transformation section 121.02 of the regulations [in effect in 1965] states in part:

> As used in § 123.03(d) of this subchapter the term "substantially transformed" shall refer to the realteration of firearms abroad to accomplish the following changes:
>
> * * * * * * *
>
> (b) As applied to pistols and revolvers, the changes must have included at least either (1) re-chambering or (2) modification of the cylinders for the accomodation of a lower or higher caliber cartridge. [22 C.F.R. § 121.02.]

Apart from statutory and regulatory considerations, it is well settled that American products that have undergone changes in foreign countries which convert them to new and different uses lose their identity as American products upon their importation into the United States. *United States* v. *Tower & Sons*, 9 Ct. Cust. Appls. 135, T.D. 37981 (1919). The question presented in the *Tower* case was whether imported products derived from tungstic acid exported from the United States could enter this country duty free under paragraph 404 of the Tariff Act of 1913, a predecessor of Item 800.00. In rejecting free entry for the derivatives metal ingots and wire, the Court of Customs Appeals said (p. 138):

> . . . While the intent of Congress to permit free entry of such articles *changed in condition* must be observed, there is no warrant in going so far in that observance as to defeat the limitations afforded by the language of the provisions granting this right of free importation. If the returned articles are manufactured ar-

> ticles the paragraph provides they must be "manufactures of the United States" returned after having been exported. These two last classes of merchandise are manufactures, or residues thereof, not of the United States but of Canada, the manufacturing processes, the result of which gives them their names, characters, and uses, whatever they may be, having been applied in Canada. As returned, they are not the same article changed in condition, but different articles produced by different manufacturing processes applied not in the United States but in Canada. The court therefore is of the opinion that they are not entitled to free entry under this paragraph.

In the instant case the uncontroverted evidence presented on the motion discloses that the changes made in Canada on revolvers of unquestioned American manufacture converted them to new and different uses. After the rechambering operation the revolvers were no longer capable of firing with accuracy the .38 caliber bullets which they had been originally designed to fire. Rechambering suited these revolvers to accept and fire the .38 caliber special bullets—bullets with different dimensions and capacities. And this change necessitated a different nomenclature for these revolvers. i.e., .38 special caliber rather than .38 caliber. It follows, therefore, that the imported revolvers, under the principle of the *Tower* case, must be considered to be products of Canada rather than of the United States.

Section 1934(b) and the State Department regulations promulgated thereunder, speaking in terms of substantial transformation as rendering weapons in effect articles of foreign manufacture, affords the court an additional basis for reaching the same conclusion regarding loss of identity as to the imported revolvers.

Inasmuch as the imported revolvers, in the condition in which imported, are products of Canada, it is immaterial whether an advancement in value or improvement in condition has taken place in connection with their conversion in Canada. Advancement in value and improvement in condition are pertinent considerations under item 800.00 only where it is determined under the evidence that the imported merchandise is the merchandise that was exported. *Shell Oil Co. of Canada, Ltd.* v. *United States*, 27 CCPA 94, 98, C.A.D. 68 (1939).

Also, the question of whether compliance with the customs regulations relating to item 800.00 claims was waived poses no issue for the court to decide on this motion. The defendant does not press this objection here, but rather relies wholly on its argument which goes to the merits of the case. The waiver question is procedural in nature and does not go to the merits of the case.

For the reasons stated, the court is in agreement with the defendant that there is no triable issue in the case. On the evidence presented on the motion defendant is entitled to a summary judgment in its favor as a matter of law. Judgment will be entered herein accordingly.

(C.D. 4565)

PARKSMITH CORPORATION *v.* UNITED STATES

Memorandum Opinion and Order

Court No. 71-12-01923

Port of New York

[Defendant's motion to sever and dismiss granted.]

(Dated November 6, 1974)

Serko & Sklaroff (*David Serko* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Edward S. Rudofsky*, trial attorney), for the defendant.

WATSON, Judge: Defendant has moved for an order severing eight of the protests in this action and dismissing them on the ground the court lacks jurisdiction, more particularly that the party protesting the classification is not the party which made the entry and that the plaintiff named in the summons and complaint is not the party which entered the merchandise, or which protested its classification. Defendant points out that with regard to the challenged portions of this action the entries were made by "Parksmith, a Div. of Universal Marion Corp." an entity organized and existing under the laws of the State of Florida; the protests were made by "Parksmith Corp. Div. of Universal Marion Corp." and the summons and complaint were made in the name of Parksmith Corp. a corporation organized under the laws of the State of New York.

Neither in its opposition to the motion or in oral argument did plaintiff explain how a New York corporation happens to be in court challenging the tariff treatment of merchandise imported by a Florida corporation. Nor has plaintiff explained how the protests could be valid if they were not brought by the Universal Marion Corp.

Plaintiff has requested that the court issue a written opinion on this matter to provide guidelines on the issue raised. Although the hosts of dismissals without comment in previous "Parksmith" cases might be expected to alert plaintiff to the obvious deficiencies of its presentation, I am willing to be specific. I am dismissing the challenged protests for lack of jurisdiction because plaintiff has not come forward with even a single shred of evidence to clarify the doubts existing with regard to the jurisdiction of the court. Specifically, plaintiff has completely failed to explain why the party making the challenged protests appears to be different from the party entering the merchandise. Plaintiff has completely failed to explain why the plaintiff on the summons and complaint is not the same party who entered the

merchandise. Plaintiff has failed to answer the question, "Why is the party which initiated this action not the same party which imported this merchandise?" Or stated differently, what makes Parksmith Corp. the correct party to bring this action insofar as it relates to the challenged entries?

In sum, my guidelines herein are as follows: If the jurisdiction of the court is challenged, as it has been here by defendant, the plaintiff must prove that jurisdiction exists. In this case it means that plaintiff must prove the existence of facts from which it can be reasonably concluded that the challenged protests were made and ultimately brought to court by the party allowed to do so under the law. Without evidence of any sort, there is no need to discuss cases in which plaintiffs successfully rose to jurisdictional challenges. See for example, *The Diamond Match Company* v. *United States* (*Winter, Wolff & Co., Inc., Party In Interest*), 45 Cust. Ct. 198, C.D. 2223 (1960), *aff'd* 49 CCPA 52, C.A.D. 796 (1962); *Triumph Glove Co.* v. *United States*, 24 Cust. Ct. 221, C.D. 1237 (1950); and *M. de Orlando & Co.* v. *United States*, 38 Treas. Dec. 180, T.D. 38303, G.A. 8325 (1920).

Defendant has argued that plaintiff ought to be estopped from asserting jurisdiction herein by virtue of the multiplicity of prior cases in which, on similar facts, defendant's motion to dismiss was granted. As much as I am inclined to find some drastic and decisive way of giving short shrift to plaintiff's opposition, I do not feel that collateral estoppel applies.

The mechanics of the motion process used therein and the disposition without opinion suggests as a more accurately phrased statement of prior results merely that plaintiff has failed to sustain or prove jurisdiction in the past. This in itself does not necessarily generate a final conclusion regarding jurisdiction but rather a conclusion regarding plaintiff's failure in each instance to adduce the necessary proof.

For the reasons expressed above, defendant's motion to sever protests 1001–1–008860, 1001–1–009789, 1001–1–011958, 1001–1–012198, 1001–1–012508, 1001–1–016547, 1001–1–019250 and 1001–1–021295 from this action and to dismiss the same is granted.

(C.D. 4566)

AMICO, INC. (FORMERLY KNOWN AS: EXHIBIT SALES, INC.)
v. UNITED STATES

Toys—Christmas ornaments

TOYS—SAMPLES

It is especially true in toy cases that the probative effect of a sample import is such as not only to prove the original classification

to have been erroneous, but also to provide a sufficient basis to establish the propriety of the claimed classification. Thus, here, an examination of a sample illustrative of the importations involved shows that the importations are not toys but rather are Christmas ornaments.

Court No. 70/55493

Port of Philadelphia

[Judgment for plaintiff.]

(Decided November 6, 1974)

Allerton deC. Tompkins for the plaintiff.

Carla A. Hills, Assistant Attorney General (*John A. Gussow* and *Andrew P. Vance*, trial attorneys), for the defendant.

MALETZ, Judge: This case involves the proper tariff classification of merchandise invoiced as an "Inflatable Santa in Ball Christmas wall decoration" that was imported from Hong Kong and entered at Philadelphia, Pennsylvania in 1970. The importations were classified by the government under item 737.40 of the tariff schedules, as modified by T.D. 68–9, as toy figures of animate objects and duty was assessed at the rate of 24 percent ad valorem. The government claims alternatively that the importations are classifiable under item 737.90 of the tariff schedules, as modified by T.D. 68–9, as toys, not specially provided for, which are also dutiable at 24 percent ad valorem.

Plaintiff claims that the imported merchandise is properly classifiable under item 772.97 of the tariff schedules, as modified by T.D. 68–9, as Christmas ornaments, dutiable at the rate of 11.5 percent ad valorem.

The pertinent provisions of the tariff schedules read, as follows:

Classified under:

Subpart E [Schedule 7, Part 5] headnotes:

1. The articles described in the provisions of this subpart (except parts) shall be classified in such provisions, whether or not such articles are more specifically provided for elsewhere in the tariff schedules * * *.

* * * * * * *

2. For the purposes of the tariff schedules, a "toy" is any article chiefly used for the amusement of children or adults.

* * * * * * *

	Toy figures of animate objects (except dolls):	
	Not having a spring mechanism:	
	* * * * * * *	
	Not stuffed:	
	* * * * * * *	
737.40	Other	24% ad val.
	Alternative classification claimed by government:	
	Toys, and parts of toys, not specially provided for:	
	* * * * * * *	
737.90	Other	24% ad val.
	Classification claimed by plaintiff:	
	* * * Christmas ornaments; * * *; all the foregoing * * * of rubber or plastics:	
772.95	Christmas tree ornaments	* * *
772.97	Other	11.5% ad val.

At the outset, it is to be noted that there is a presumption of correctness attendant not only upon the classification of the imported articles under item 737.40 as toy figures of animate objects, but also upon each subsidiary fact necessary to support that conclusion. Since this original classification required a subsidiary finding that the imported articles were, *inter alia*, toys, "[w]hen the government asserted the broader provision, covering toys, in general [i.e. item 737.90], as an alternative to the original classification, it * * * [is] permitted to rely on the presumption of correctness attaching to that subsidiary finding * * *." *United States* v. *New York Merchandise Co.*, 58 CCPA 53, 58–9, C.A.D. 1004, 435 F.2d 1315, 1318–9 (1970).

In this circumstance, plaintiff here has the twofold burden of establishing that the presumptively correct classification of the imported articles as toys was in error and that the articles are properly classifiable under item 772.97 as other Christmas ornaments. In other words, in order to prevail, it is incumbent on plaintiff to prove that the importations were not chiefly used for the amusement of children or adults [1] but rather were chiefly used for ornamental purposes. And in this connection it has been consistently held that articles chiefly used for ornamental, decorative or display purposes are outside the scope of the toy provisions. E.g., *Fred Bronner Corp.* v. *United States*, 57 Cust. Ct. 428, 436, C.D. 2832 (1966); *Louis Marx & Co.* v. *United States*, 65 Cust. Ct. 672, 675, C.D. 4156 (1970).

[1] An object is one of amusement under the tariff schedules if its "purpose * * * is to give the same kind of enjoyment as playthings give. * * * whether the object is to be manually manipulated, used in a game, or * * * worn." *United States* v. *Topps Chewing Gum*, 58 CCPA 157, 159, C.A.D. 1022, 440 F.2d 1384, 1385 (1971).

It is also important to observe that in toy cases it is not uncommon that "the probative effect of the sample imports, themselves, is such as not only to prove the original classification to have been erroneous, but also to provide a sufficient basis to establish the propriety of the asserted classification." *United States* v. *New York Merchandise Co.*, *supra*, 58 CCPA at 59, 435 F.2d at 1319. See also e.g., *United States* v. *Sears, Roebuck & Co.*, 27 CCPA 235, 238, C.A.D. 91 (1940); *New York Merchandise Co.* v. *United States*, 62 Cust. Ct. 38, 41, C.D. 3671, 294 F. Supp. 971, 974 (1969); *Louis Marx & Co.* v. *United States*, *supra*, 65 Cust. Ct. at 674–5; *B. Shackman & Company* v. *United States*, 67 Cust. Ct. 372, 383, C.D. 4300 (1971). Particularly relevant on this aspect is *Wilson's Customs Clearance, Inc.* v. *United States*, 59 Cust. Ct. 36, C.D. 3061 (1967), where the court held, primarily on the basis of the sample imports, that the government's classification of certain nodding head dog-like figures as toy figures of animate objects under item 737.40 of the tariff schedules was erroneous. In finding that the articles were not toys, the court made the following comments that bear repetition here (*id.* at 40–1):

> * * * [A]s is especially true in toy cases, the sample merchandise can offer potent evidence on the question of use, and when in harmony with the other evidence of record, can permit the drawing of inferences as to use nationally. *Fred Bronner Corp.*, *supra*. There is precedent under the two previous tariff acts for viewing sample evidence as sufficiently persuasive to rebut the presumption of correctness on a toy classification and to shift the burden to the defendant. *United States* v. *The Halle Bros. Co.*, 20 CCPA 219, T.D. 45995; *United States* v. *Borgfeldt & Co.*, 13 Ct. Cust. Appls. 620, T.D. 41461.
>
> We are inclined to the view that the present case presents one of those occasions where the sample merchandise itself supplies the necessary persuasiveness to carry the issue for the plaintiff, at least when the presumptive correctness of the collector's classification stands unsupported. The presence of a sharp and rather easily exposed hook renders the merchandise patently unusable by children of tender years. As for those over puberty, the articles represent essentially passive, uncomical, almost nonmanipulatable, yet finely finished replicas of well-known dog species. As such they are eminently suitable for purposes of display or ornamentation, no matter where that may be, and substantially incapable of functioning as objects of play or amusement in any normal or intelligent use. It is not a question of their appearing more suitable for one use than another as was the case in *Fred Bronner Corp.*, *supra*, but of their offering mute testimony of their substantial incapability of use as classified. This type of potent evidence when in harmony with all other evidence presented satisfies the court that a shift in burden on this issue has taken place.

With these considerations in mind, the court must conclude on the basis of an examination of a sample illustrative of the importations

in the present case that the importations are not toys, i.e. articles chiefly used for the amusement of children or adults, but rather are chiefly used for Christmas ornamental purposes.

The sample consists of an inflatable image of a plastic, stylized Santa Claus figure (measuring about 10 inches in length when inflated) which is contained in an inflatable plastic "ball" about 12½ inches high and 8 inches thick when inflated, with the figure attached to the ball by a small tube.[2] The ball has a transparent plastic face or front on which is imprinted in gold, red and green a Santa Claus in a sleigh drawn by eight reindeer. Further, the ball has an opaque white plastic back on the inside of which is inscribed "Merry Christmas." The top, sides and bottom of the ball are also composed of opaque, white plastic, and on the top portion there are imprinted 12 sprigs of green and gold holly leaves with red berries. On the outside back of the ball near the top there is a tab with a hole in it for the purpose of hanging. At the bottom circumference of the ball there is a round disc about 3½ inches in diameter which enables the ball to stand in an upright position. Contained on the back of the ball are two plastic nozzles; one for inflating the Santa Claus figure and the other for inflating the ball.

This sample, with its obvious and pronounced identification with Christmas; with the Santa Claus figure; with the typical Christmas colors (white, gold, green and red); with its reindeer, sleigh and holly sprig designs; with its elaborate decorative effects; with a tab for hanging and a flat bottom disc to enable it to stand upright; identifies it in the strongest way as being an attractive Christmas holiday season decoration and not a toy. In short, it must be concluded from an examination of the sample, that the importations are eminently suitable for purposes of Christmas ornamentation and entirely unsuitable as objects of play or amusement in normal use.

In harmony with the conclusion that the importations are Christmas ornaments and not toys is the testimony of the manager of plaintiff's import department. To the extent relevant, her testimony was to the following effect: She has observed the imported articles' use on a number of occasions in the Philadelphia, Pennsylvania area—and in the States of New York, New Jersey, Illinois and Nevada. In this connection, she had seen the article used only during the Christmas season at which time she observed it in the Christmas decoration departments of various stores and in people's houses where it was suspended by the tab on the back from the ceilings, windows or doorways as a Christmas decoration. She had never seen the article used as a plaything.

Contrary to the foregoing testimony was the testimony of the wife of a Customs Service import specialist at the port of Philadelphia.

[2] While the article containing the Santa Claus figure is referred to as a "ball," actually its configuration when inflated resembles that of a round cushion or a rounded pill.

She testified that one of her five children had received a Santa Claus contained in an inflatable ball as a Christmas present; that her three-year-old and one-year-old child had played with it like a ball and referred to it as a toy; that the article lasted about two weeks after which it started to deflate; and that she had never seen anybody else use the article. This testimony, however, cannot be given much weight considering that the witness had seen the article used by her children for only two weeks. Further, such sporadic use by these children is scarcely decisive of the nature of the article particularly in light of the fact that not everything that a child plays with or that amuses a child is a toy. See e.g., *Illfelder* v. *United States*, 1 Ct. Cust. Appls. 109, 111, T.D. 31115 (1910).

In summary, it is held that the importations in issue are properly classifiable under item 772.97 as other Christmas ornaments. Plaintiff's claim is therefore sustained and judgment will be entered accordingly.

(C.D. 4567)

SANFORD STEEL PIPE PRODUCTS CO. *v.* UNITED STATES

Metals and alloys (welding fittings)

EXPORT VALUE—FREELY OFFERED PRICE

In order to establish that the prices at which an exporter makes a single sale constitute the export value of the merchandise, it is incumbent upon the importer to prove that the merchandise was freely offered for sale at such prices to all purchasers at wholesale for exportation to the United States.

EXPORT VALUE—FREELY OFFERED PRICE—WILLINGNESS TO SELL

The mere willingness of an exporter to sell at specified prices, unaccompanied by price lists or evidence of overt communications with prospective customers, is insufficient to establish that the merchandise was freely offered for sale at such prices to all purchasers at wholesale for exportation to the United States.

Court No. R68/6142

Port of Chicago

[Judgment for defendant.]

(Decided November 15, 1974)

Allerton deC. Tompkins for the plaintiff.

Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

MALETZ, Judge: This action concerns the correct dutiable value of certain unfinished welding fittings that were exported from West

Germany in April 1967 by the manufacturer, H. Siekmann & Co., Bunde (Westf), West Germany, and entered by the plaintiff-importer at the port of Chicago in June 1967.

The merchandise was appraised by the government on the basis of export value as defined in section 402(b) of the Tariff Act of 1930, as amended (19 U.S.C. § 1401a(b)). In making the appraisement, the government rejected the invoice prices as representing export value and adopted higher values. Plaintiff, while agreeing that export value is the proper basis of appraisement, insists that such value is represented by the invoice prices, i.e., the c.i.f. prices, less a pro-rated amount for ocean freight, seaway tolls and marine insurance. Thus, the issue is whether plaintiff has established by a preponderance of the evidence that its claimed values represent the proper export value for the merchandise in issue.

The pertinent provisions of section 402 of the Tariff Act of 1930, as amended (19 U.S.C. § 1401a) are as follows:

(b) EXPORT VALUE.—For the purposes of this section, the export value of imported merchandise shall be the price, at the time of exportation to the United States of the merchandise undergoing appraisement, at which such or similar merchandise is freely sold or, in the absence of sales, offered for sale in the principal markets of the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States, plus, when not included in such price, the cost of all containers and coverings of whatever nature and all other expenses incidental to placing the merchandise in condition, packed ready for shipment to the United States.

* * * * * * *

(f) DEFINITIONS.—For the purposes of this section—

(1) The term "freely sold or, in the absence of sales, offered for sale" means sold or, in the absence of sales, offered—

(A) to all purchasers at wholesale, or

(B) in the ordinary course of trade to one or more selected purchasers at wholesale at a price which fairly reflects the market value of the merchandise,

without restrictions as to the disposition or use of the merchandise by the purchaser, except restrictions as to such disposition or use which (i) are imposed or required by law, (ii) limit the price at which or the territory in which the merchandise may be resold, or (iii) do not substantially affect the value of the merchandise to usual purchasers at wholesale.

At the outset, it is undisputed that the merchandise is not on the final list; that the quantities herein ordered for the merchandise in question (carload lots) were the "usual wholesale quantities"; that the principal market in West Germany for the sale of such or similar merchandise for export value purposes was in Bunde (Westf), West Germany; and

that there was no corporate or family relationship between the importer and exporter. Beyond that, the following additional facts were established by the record: [1] During the years 1966 and 1967, plaintiff was the only United States buyer of unfinished welding fittings from the exporter, Siekmann. However, there was no exclusive agreement of any kind between Siekmann and the plaintiff and thus plaintiff was not a selected purchaser within the meaning of section 402(f)(1)(B).[2] Sales made by Siekmann to plaintiff were without restrictions of any kind as to the disposition or use of the merchandise by the latter. The prices shown on the invoices were, with one exception, the actual purchase prices.[3] Further, the importations in issue were shipped in partial fulfillment of an order placed by plaintiff on November 4, 1966 and accepted by Siekmann on November 21, 1966. In this circumstance, the present controversy involves a single sale made by Siekmann to plaintiff.

In order to establish that the prices at which Siekmann made this single sale constituted the export value for the merchandise, plaintiff was required to prove that the merchandise was freely offered for sale at such prices to all purchasers at wholesale for exportation to the United States. *United States* v. *Malhame & Co.*, 19 CCPA 164, 171, T.D. 45276 (1931); *United States* v. *Manahan Chemical Co., Inc.*, 24 CCPA 53, 62, T.D. 48333 (1936); *L. H. Graves* v. *United States*, 61 Cust. Ct. 580, 583, A.R.D. 242, 287 F. Supp. 611, 614 (1968). Against this background, the record contains no proof whatever as to how merchandise such as that in issue was offered to other purchasers at wholesale at the time of exportation to the United States. Ordinarily, a freely offered price can be established by the existence of a manufacturer's price list freely circulated to the trade. See *Judson Sheldon International Corporation* v. *United States*, 51 Cust. Ct. 374, 378 R.D. 10586 (1963), *aff'd*, 54 Cust. Ct. 773, A.R.D. 183 (1965). However, the testimony of Mr. Takiff, plaintiff's general

[1] The record consists of the testimony of Sanford Takiff, general manager of plaintiff; an affidavit of Edwin Klein, sales manager of the exporter, Siekmann, that was executed in 1970; and a certified report of a customs representative relating to an interview he had in 1966 with Klein and the export manager of Siekmann. It is to be observed that 28 U.S.C. § 2635(b) (1970) provides in part that where the value of merchandise is in issue, reports of customs officers and affidavits of other persons whose attendance cannot reasonably be had, may be admitted in evidence when served upon the opposing party in accordance with the rules of the court.

[2] A selected purchaser situation within the meaning of section 402(f)(1)(B) results when a seller restricts his sales to one or more specifically designated purchasers. See e.g., *Aceto Chemical Co., Inc.* v. *United States*, 51 CCPA 121, 127, C.A.D. 846 (1964); *C. H. Powell Co., Inc.* v. *United States*, 67 Cust. Ct. 493, 498, n. 3, R.D. 11752 (1971), *aff'd*, 69 Cust. Ct. 257, A.R.D. 307 (1972).

[3] The exception is that the invoices showed that the pro-rated amount for costs incurred for ocean freight, seaway tolls and marine insurance totaled DM 5,070.95, while plaintiff's proof established that the total costs for these claimed deductions totaled DM 4,491.91.

manager, was to the effect that Siekmann did not issue a price list for unfinished fittings.

In the absence of a price list, numerous other avenues are available to a party to prove a freely offered price, such as prices contained in catalogues and letters, telegrams, etc. from the manufacturer to potential buyers. No such evidence was presented at the trial of this case.

Indeed, far from establishing a freely offered price by the exporter, the testimony of Takiff makes clear that *plaintiff* initiated the transaction in issue by offering to buy the fittings at particular prices. Thus, Takiff testified that plaintiff began doing business with Siekmann in 1965 when it wrote Siekmann offering to purchase unfinished fittings at specified prices.[4] Siekmann accepted the offer and a contract ensued. In the latter part of the following year, 1966, plaintiff made a further offer to purchase from Siekmann the fittings here in issue at the same prices that had been agreed upon in 1965. Takiff testified that because of the size of the order, he knew that plaintiff's offer would be accepted by Siekmann—as it was.[5] In sum, the offer involved in this case was to purchase—not to sell. And on this score, the record fails to show that there was any mechanism whereby any potential purchaser could inform itself as to the selling price agreed upon between plaintiff and Siekmann. In fact, for all that appears in the record, it would seem that other United States purchasers would have to make their own offers to Siekmann in order to buy unfinished fittings such as those involved here, and that Siekmann could then accept an offer or make a counteroffer.

In addition to Takiff's testimony, there is another piece of evidence which militates against a finding that plaintiff's prices represent the export value for the involved merchandise. This evidence is contained in a customs representative's report dated August 3, 1966 setting forth information furnished to him jointly by two officials of Siekmann in the course of an interview on May 9, 1966. This report states that these two officials—one of whom was Edwin Klein, Siekmann's general manager, and the other, Siekmann's export manager—provided the following information:

> Siekmann prices depend upon bargaining. Prices are based upon United States manufacturers prices, and depend upon the quantity

[4] According to Takiff, plaintiff arrived at its offering prices to Siekmann in 1965 in the following manner: First, plaintiff asked particular customers at what prices they would buy certain types of unfinished fittings from plaintiff. These customers in turn indicated that they could obtain the fittings from plaintiff's competitors at specified prices, and that if plaintiff could meet those prices, it would get the business. Plaintiff then deducted from those prices the duty, interest, and its profit and came up with c.i.f. prices, which prices then became its offering prices to Siekmann.

[5] It is to be noted that with respect to the importations in question, plaintiff was accorded a trade discount of three percent on so-called long radius fittings and five percent on short radius fittings. Takiff, however, was unable to recall why Siekmann allowed these discounts.

> and quality ordered. Since early in 1964 customers generally stipulate a "limit price" which Siekmann accepts or rejects according to practical business considerations of profit.[6]

The single shred of testimony concerning the manner in which the merchandise in question was offered by Siekmann to other potential buyers in the United States is contained in an affidavit of the aforesaid Edwin Klein that was executed on May 21, 1970.[7] In his affidavit, Klein stated:

> 11. The same terms and prices for the same unfinished welding fittings *are* available to every U.S. buyer buying in large wholesale quantities, such as the quantities purchased by Sanford. [Emphasis added.]

The weight to be given this evidence must be "assessed in practical terms, considering such factors as completeness, adequacy of bases, and possible motives to deceive." *Mannesmann Meer, Inc.*, v. *United States*, 58 CCPA 6, 8, C.A.D. 995, 433 F.2d 829, 831 (1970). Measured by this standard, it must be concluded that the foregoing testimony is entitled to little weight. In the first place it is unsupported by any records or offers to sell. Second, it is inconsistent with the testimony of Takiff which set forth in some detail how the prices on the imports were arrived at. Third, it is at direct variance with the earlier statement Klein gave to the customs representative. And in this latter connection, it is not without significance that Klein's statement to the customs representative was made in May 1966—almost two years before the present action was commenced on March 1, 1968, while his affidavit was executed in May 1970—over two years after the action was started.

These considerations aside, since in his 1970 affidavit Klein used the present tense "are," it is impossible to conclude that the prices he referred to were those containing discounts.[8] For paragraph 8 of his affidavit states that from the end of 1968 no discounts were given by

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[6] Contrary to plaintiff's objections, this report is quite germane to the present litigation. Although the report relates to an interview in 1966—which was prior to the date of exportation—it is relevant to show the manner in which Siekmann established its prices. Time is not a controlling factor since (as previously indicated) Takiff testified that the prices for the merchandise in issue were the same as the prices that plaintiff and Siekmann had agreed upon in 1965. Nor is it of any moment that the report deals with transactions between Siekmann and Iraco, Ltd. rather than transactions between Siekmann and plaintiff—this by reason of the fact that Iraco was plaintiff's "Head Office" in Europe. Moreover, the reference in the report to a so-called "limit price" was corroborated by the testimony of Takiff and was very much a part of the manner in which the prices to plaintiff were arrived at.

[7] In the customs representative's report, Klein was identified as the general manager of Siekmann. In his affidavit, however, Klein identified himself as Siekmann's sales manager.

[8] As previously observed, Siekmann's prices to plaintiff contained a discount of three percent or five percent depending on whether the fittings were long or short radius ones. See note 5, *supra*.

Siekmann for unfinished fittings. Moreover, the statement in paragraph 11 of the affidavit is, at best, an indication that Siekmann was willing to sell to others at the same prices it sold to plaintiffs. However, the mere willingness to sell at the claimed prices, unaccompanied by price lists or evidence of overt communications with prospective customers, is insufficient to establish that the merchandise was freely offered for sale at such prices to all purchasers at wholesale for exportation to the United States. *American Biltrite Rubber Co., Inc., Boston Woven Hose & Rubber Division* v. *United States*, 60 Cust. Ct. 946, 950, A.R.D. 235 (1968). See also e.g., *Transatlantic Shipping Co., Inc.* v. *United States*, 28 CCPA 19, 23–4, C.A.D. 118 (1940); *Bluefries New York, Inc.* v. *United States*, 33 Cust. Ct. 501, 506, R.D. 8317 (1954).

From the foregoing, it is held that plaintiff has failed to establish that the prices it paid for the merchandise in question were freely offered to all purchasers at wholesale. The action is therefore dismissed and the appraised values affirmed. Judgment will be entered accordingly.

(C.D. 4568)

DURST INDUSTRIES, INC. *v.* UNITED STATES

Metal products—Water faucets

"MORE THAN" DOCTRINE

It is, of course, a fundamental rule in judicial construction affecting tariff terms that an item which is "more than" a certain article cannot fall within the *eo nomine* provision for that article. *United States* v. *Flex Track Equipment, Ltd., Border Brokerage Co., Inc.*, 59 CCPA 97, C.A.D. 1046, 458 F. 2d 148 (1972); *Servo-Tek Products Co.* v. *United States*, 57 CCPA 13, C.A.D. 969, 416 F. 2d 1398 (1969).

SAME

However, merchandise is classifiable on the basis of its primary design, construction and function, even though it is capable of performing other auxiliary or incidental operations.

SAME—COMMON MEANING

In order to determine if an article is more than that provided for in a particular tariff provision, it is necessary to ascertain the common meaning of the tariff provision and compare it with the merchandise in issue. *E. Green & Son (New York), Inc.* v. *United States*, 59 CCPA 31, 34, C.A.D. 1032, 450 F. 2d 1396, 1398 (1971).

"TAPS"—"COCKS"—COMMON MEANING—COMBINATION FAUCETS

Combination faucets, comprised of hot and cold water valves and a common spout, are within the common meaning of the terms "taps" and "cocks" as used in item 680.20, TSUS.

SAME—CENTERSET FAUCETS

Centerset faucets, which comprise a "pop-up" valve as well as hot and cold water valves, are more than "taps" or "cocks" within the common meaning of those terms, as used in item 680.20, TSUS. However, the centerset faucets are properly dutiable under item 680.20 as "similar devices * * * used to control the flow of liquids * * *" since such faucets are *ejusdem generis* with taps, cocks and valves enumerated *eo nomine*.

Court No. 67/36502

Port of New York

[Judgment for defendant.]

(Decided November 26, 1974)

Allerton deC. Tompkins for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Robert B. Silverman*, trial attorney), for the defendant.

NEWMAN, Judge: The issue in this case concerns the correct dutiable status of certain water faucets imported from Japan in 1966 described on the commercial invoice as: "Al CP Brass Female Combination Faucet w/dish & post" (hereinafter "combination faucet"), and "A238 CP Brass 4" Centerset w/pop up" (hereinafter "centerset faucet").

The merchandise was assessed with duty at the rate of 1.275 cents per pound plus 18 per centum ad valorem under item 680.20 of the Tariff Schedules of the United States (TSUS). Plaintiff contends that the imports are "more than" any of the articles provided for in item 680.20, TSUS, and are properly dutiable under item 654.00, TSUS, at the rate of 10 per centum ad valorem as either sanitary wares or parts thereof, or as articles not specially provided for of a type used for household use.

STATUTES INVOLVED

Tariff Schedules of the United States:

Schedule 6.—METALS AND METAL PRODUCTS

* * * * * * *

Part 3.—METAL PRODUCTS

* * * * * * *

Subpart F.—Miscellaneous Metal Products

* * * * * * *

	Articles not specially provided for of a type used for household, table, or kitchen use; toilet and sanitary wares; all the foregoing and parts thereof, of metal:	
* * * * * * *		
	Articles, wares, and parts, of base metal, not coated or plated with precious metal:	
* * * * * * *		
	Of copper:	
654.00	Of brass	10% ad val.
* * * * * * *		

Part 4.—Machinery and Mechanical Equipment

* * * * * * *		

Subpart J.—Parts of Machines

* * * * * * *		
	Taps, cocks, valves, and similar devices, however operated, used to control the flow of liquids, gases, or solids, all the foregoing and parts thereof:	
	Hand-operated and check, and parts thereof:	
680.20	Of copper	1.275¢ per lb. + 18% ad val.

The Record

Plaintiff presented the testimony of two witnesses: Jules Rosenkranz, vice-president of the plaintiff corporation; and Melvin Morris, manufacturer's agent selling plumbing products. Additionally, plaintiff submitted representative samples of the combination and centerset faucets, as well as copies of two laboratory reports by the United States Customs Laboratory at New York showing the metallic content of the samples. The entry papers were received in evidence without marking.

Defendant presented the testimony of two witnesses: Robert W. Sullivan, executive vice-president of the Valve Manufacturers Association; and Theodore H. Johnson, product manager in charge of plumbing fittings for American Standards, Inc.

Facts

The combination faucet is the common kitchen sink type of fixture having inlets for hot and cold water, and a valve for each inlet designed to control the flow of water through a single spigot or spout. By opening or closing the valves, the volume of hot and cold water

running through the faucet can be controlled so that the temperature of the water flowing from the spout can be regulated. The term "combination" refers to the fact that both hot and cold water valves utilize a common spout in the faucet. Thus, hot and cold water may be so mixed as to regulate the temperature of the water flowing from the spout. Mr. Rosenkranz described this mixing features (R. 42–43):

> Q. How is it that this article, Plaintiff's Exhibit 1, mixes the temperature of water?—A. Well, it allows—there's an opening on each end; one is connected to a hot water line and the other one is connected to a cold water line. When both valves are opened, water flows through the center portion of the body and flows out of the spout.
>
> Q. All right.—A. And you are controlling the temperature, depending how much of the opening you have on each of the valves.
>
> Q. So then just by manipulating the hot water valve, the spout would only have hot water coming out of it, and just by manipulating the cold water valve we would only have cold water?—A. Yes.
>
> Q. Or any combination of the two.—A. That's correct.

Also, attached to the combination faucet by a post is a soap dish, which constitutes approximately ten percent of the cost of the article.

The centerset faucet is the common lavatory type of fixture and operates in the same manner as the combination faucet. However, in addition, the centerset faucet comprises a "pop-up" valve or drain which is designed to retain water in the basin when the drain is closed and to permit the flow of water from the basin into a drainage pipe when the drain is open. The pop-up valve is controlled by means of a handle, which moves up and down through a hole behind the spout of the centerset. Mr. Rosenkranz described the operation of the "pop-up" valve (R. 49–50):

> Q. I believe you testified on direct examination that the function of the pop up valve controls the waste water.—A. Yes.
>
> Q. Can you explain how that controls the waste water?—A. By lifting the knob in an upward position it seals the outlet portion of the basin from water flowing out. Conversely, compressing the knob would raise the valve portion of the fixture upward, allowing the water to flow out. It closes and shuts water flows, is what it really does. Opens and closes water flows.
>
> Q. Are there only two positions, open and closed, or can it be adjusted to any combination?—A. It can be adjusted to any combination.
>
> Q. And by adjusting the pop up valve you can determine or control the——A. The amount.
>
> Q. Of water that flows out?—A. That is correct.

Q. And the speed with which the water would flow out?—A. Yes.

Defendant's witness Johnson also explained the operation of the pop-up valve (R. 120):

Q. Now Plaintiff's Exhibit 2 additionally consists of a pop up valve.—A. Yes, that's correct.

Q. Would you please describe that?—A. The pop up valve is a device that is placed in the bottom, or the outlet portion of the lavatory, and attached to the ware, and by mechanical operation of a rod and a knob in the rear portion of the body of the fitting, the mechanical advantages are produced so that the plunger, the stopper is moved up and down to open and close this particular valve.

Q. And what is the function of the valve?—A. The valve—this valve is designed to really stop and control and start the flow of the waste water that's in the basin of the lavatory.

Contentions of the Parties

In support of its "more than" theory, plaintiff contends that " 'taps', 'cocks' and 'valves' have only *one* moving part (spindle) to control the flow of liquids, gasses [sic] or solids, whereas the imported articles are combinations of other things, *containing* two or more valves which permit the articles to function primarily as hot and cold water mixing devices". Further, argues plaintiff, the imports "are not themselves bought, sold or commonly known as 'taps', 'cocks' or 'valves', and they are not similar to such things". Plaintiff claims that the merchandise is classifiable as sanitary wares or parts thereof, or alternatively, as articles not specially provided for of a type used for household use.

Defendant contends that the imported articles are within the common meaning of the *eo nomine* provisions for "taps" or "cocks". Alternatively, defendant claims that the imported articles are classifiable under item 680.20 as "similar devices * * * used to control the flow of liquids, gases, or solids".

Decision

It is, of course, a fundamental rule in judicial construction affecting tariff terms that an item which is "more than" a certain article cannot fall within the *eo nomine* provision for that article. *United States* v. *Flex Track Equipment, Ltd., Border Brokerage Co., Inc.*, 59 CCPA 97, C.A.D. 1046, 458 F. 2d 148 (1972); *Servo-Tek Products Co.* v. *United States*, 57 CCPA 13, C.A.D. 969, 416 F. 2d 1398 (1969). However, merchandise is classifiable on the basis of its primary design, construction and function, even though it is capable of performing other auxiliary or incidental operations. *Trans-Atlantic Company* v.

United States, 60 CCPA 100, C.A.D. 1088, 471 F. 2d 1397 (1973); *United Carr Fastener Corporation* v. *United States* (*Northern Screw Corp., Party in Interest*), 54 CCPA 89, C.A.D. 913 (1967); *J. E. Bernard & Co., Inc.* v. *United States*, 66 Cust. Ct. 362, C.D. 4215 (1971); *Fedtro, Inc.* v. *United States*, 65 Cust. Ct. 35, C.D. 4050 (1970); *Schick X-Ray Co., Inc.* v. *United States*, 64 Cust. Ct. 430, C.D. 4013 (1970); *Astra Trading Corp.* v. *United States*, 56 Cust. Ct. 555, C.D. 2703 (1966).

Respecting the "more than" doctrine, the majority of the appellate court observed in *E. Green & Son* (*New York*), *Inc.* v. *United States*, 59 CCPA 31, 34, C.A.D. 1032, 450 F.2d 1396, 1398 (1971):

> Only the most general of rules can be ascertained from the previous decisions dealing with the "more than" doctrine, and it appears that each case must in the final analysis be determined on its own facts. See *United Carr Fastener Corp.* v. *United States*, 54 CCPA 89, C.A.D. 913 (1967), and the cases cited therein. *In order to determine if an article is more than that provided for in a particular tariff provision, it is necessary to ascertain the common meaning of the tariff provision and compare it with the merchandise in issue.* It is well established that in determining the common meaning of a term or word used in a tariff provision, court decisions, dictionary definitions, and other lexicographical authorities may be considered. [Emphasis added.]

Hence, the common meaning of the *eo nomine* provisions for "taps", "cocks", and "valves" must be determined and compared with the merchandise.

While plaintiff's and defendant's witnesses were in disagreement concerning whether the articles in issue are within the common meaning of "taps", "cock", or "valves", the record establishes that the imports are commonly referred to in the plumbing trade as "faucets." The following definitions indicate that "taps" and "cocks" are commonly defined as "faucets"; and conversely, "faucets" are commonly defined as "taps" and "cocks". Thus:

Webster's Third New International Dictionary (1966), at 2339, 435, and 829:

> **tap** – 1 * * * b: a device consisting of a spout and valve that is attached to the end of a pipe to control the flow of a liquid or gas: FAUCET, COCK * * *.
> **cock** – * * * 2: a faucet, tap, valve, or similar device for starting, stopping, or regulating the flow of a liquid * * *.
> **faucet** – * * * 2: a fixture for drawing a liquid from a pipe, cask, or other vessel: TAP, COCK * * *.

Chambers' Technical Dictionary (1943), at 324:

> **faucet** (*Plumb.*). (1) A small tap or cock. * * *

Dictionary of Mechanical Engineering (1961), at 71 and 124:

> **cock**
> See "faucet".
> **faucet**
> A valve on a water pipe by means of which water can be drawn from or held within the pipe. The valve is placed on the end of the pipe.

Audels Mechanical Dictionary (1942), at 228:

> **Faucet.** * * *
> 2. A cock or tap for water or other liquids.

Additionally, *Summaries of Trade and Tariff Information*, Schedule 6, Volume 10 (1969), at 81, explains the terms "tap" and "cock" appearing in the superior heading to item 680.20, TSUS:

> The term "tap" generally refers to a screwed plug type of valve such as that used in common household faucets. Cocks are simple valves in which the fluid passage is a hole in a rotatable plug fitted in the valve body. Rotation of the plug through a right angle stops the flow by opposing it to the undrilled diameter of the plug. Cocks are used to control the flow of material within a piping system rather than at the terminal of the system. * * *

While, as indicated in the *Summaries*, the term "tap" may refer to a "screwed plug type of valve such as that used in common household faucets", the lexicographic authorities quoted *supra* clearly indicate that faucets *per se* (which include a *spout* as well as a valve) also are "taps" within the common meaning of the term.

Plainly from the lexicographic authorities cited above the combination faucets are within the common meaning of the terms "taps" and "cocks". I am clear that Congress did not intend to differentiate, for tariff classification purposes, between faucets comprised of a single valve and spout and combination faucets comprised of two valves and a common spout. The combination faucets are simply a mechanical advancement over the single type in controlling the flow of water in such a manner that hot and cold water may be mixed. In this connection, it is pertinent to note that item 680.20, TSUS, as originally published for hearing by the Tariff Commission, was similar in language to heading 84.61 of the *Brussels Nomenclature* (1955).[1] See *Tariff Classification Study, Explanatory and Background Materials*, Schedule 6 (Nov. 1960), at 460 and 881–882. In the *Explanatory Notes*

[1] Item 680.20, TSUS, as originally published for hearing by the Tariff Commission provided:

> "Taps, cocks, valves, and similar appliances, for pipes, boiler shells, tanks, vats, and similar articles, including pressure-reducing valves and thermostatically-controlled valves:
> Hand-operated and swing-check valves".

to the Brussels Nomenclature, 1955, Volume III at 915, among the articles included in heading 84.61 are: "(12) Mixing taps and valves, with two or more inlets and a mixing chamber."

In view of the foregoing considerations, I find no merit in plaintiff's contention that the provisions for taps and cocks in item 680.20, TSUS, are limited to devices with a single moving part. Therefore, the combination faucets, having both hot and cold water valves and a common spout, are properly classifiable as taps or cocks under item 680.20, TSUS.

The centerset faucets, however, which comprise a pop-up valve as well as hot and cold water valves are, "more than" taps or cocks within the common meaning of those terms. As previously mentioned, the pop-up feature is designed to retain water in the basin and to control the flow of waste water and thus is obviously a significant element of the article.

To reiterate, defendant urges (in the alternative) that if the imported merchandise is not within the common meaning of "taps" or "cocks", then the merchandise is classifiable under item 680.20, TSUS, as "similar devices * * * used to control the flow of liquids * * *".[2] Respecting such contention, both parties agree that the doctrine of *ejusdem generis* is applicable. That doctrine is frequently invoked by the courts to ascertain the meaning or scope of a general description following particularly enumerated articles. *United States* v. *Damrak Trading Co., Inc.*, 43 CCPA 77, C.A.D. 611 (1956); *Nomura (America) Corp.* v. *United States*, 62 Cust. Ct. 524, C.D. 3820 (1969); *Kotake Co., Ltd., American Customs Brokerage Co.* v. *United States*, 58 Cust. Ct. 196, C.D. 2934 (1967). Thus, defendant argues that taps, cocks and valves control the flow of liquids, which is their common function; and that inasmuch as the imports also function primarily to control the flow of liquids, they are similar devices to taps, cocks and valves within the purview of item 680.20. I agree.

The centerset articles are essentially combination faucets having hot and cold water valves with an additional feature—the pop-up valve. Nevertheless, the presence of the pop-up valve does not alter the function of the article to control the flow of water, and hence is *ejusdem generis* with taps, cocks and valves.

In conclusion, I need not decide whether the imports are also sanitary wares or parts thereof, or articles of a type used for household use, as claimed by plaintiff, since in any event they are more specifically described in item 680.20, TSUS.

The protest is overruled, and judgment will issue accordingly.

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[2] Defendant does not contend that the merchandise is classifiable as "valves".

(C.D. 4569)

THE ACME SHEAR CO. *v.* UNITED STATES

Opinion on Cross-Motions for Summary Judgment

Court No. 73-2-00440

Port of Bridgeport

[Judgment for defendant.]

(Decided December 2, 1974)

Tompkins & Davidson (*Allan H. Kamnitz* of counsel) for the plaintiff.
Carla A. Hills, Assistant Attorney General (*John N. Politis*, trial attorney), for the defendant.

BOE, Chief Judge: Plaintiff has moved for summary judgment under rule 8.2 of this court. Defendant, agreeing that no genuine issue of fact exists, has cross-moved for summary judgment in its favor.

From the pleadings and from the testimony submitted by affidavits, it appears that the merchandise in question consists of nonmalleable cast-iron articles not alloyed and not coated or plated with precious metal. The articles, described in the customs invoices as "Grey Iron Castings, Art. 101C," were imported by the plaintiff from West Germany and entered at the port of Bridgeport, Connecticut, on February 25 and July 7, 1971.

Exhibits introduced by the plaintiff (exhibits 1, 2, 3 and 4) and by the defendant (exhibit A) disclose that the imported merchandise in question is castings of good quality bearing a well-defined dedication to a particular use and purpose; that is—blades or parts of scissors. From the affidavits submitted by the parties, it appears to be undisputed that the articles are rough castings not processed beyond the casting stage except for cleaning an excess of the metal, referred to as "gate," remaining after molten metal is poured into the mold for the purpose of creating the casting. Accordingly, further processing consisting of numerous other operations is required to be performed by the plaintiff before the imported castings attain the stage of completion as a finished shear blade.

The articles in question were assessed with a duty of 4.5 cents each plus 13 per centum ad valorem under item 650.89 of the Tariff Schedules of the United States, as modified by Presidential Proclamation 3822 (T.D. 68-9), providing:

Schedule 6, Part 3, Subpart E, TSUS

	Scissors and shears (except machines and except shears provided for in any of the foregoing provisions), and blades therefor:	
	* * * * * * *	
650.89	Valued over 50 cents but not over $1.75 per dozen	4.5¢ each +13% ad val.

The plaintiff, however, contends that the articles are subject to a duty at a rate of 0.5 per centum ad valorem under item 657.09 of the Tariff Schedules of the United States, as modified, providing:

Schedule 6, Part 3, Subpart G, TSUS

Subpart G headnote:

1. This subpart covers only articles of metal which are not more specifically provided for elsewhere in the tariff schedules.

	* * * * * * *	
	Articles of iron or steel, not coated or plated with precious metal:	
	Cast-iron articles, not alloyed:	
657.09	Not malleable	0.5% ad val.

In support of its contention, the plaintiff submits that the instant case is controlled by the decisions in a series of cases relating to castings and forgings heretofore determined by this court and the Court of Customs and Patent Appeals. *United States* v. *The Singer Manufacturing Company*, 37 CCPA 104, C.A.D. 427 (1950); *Ford Motor Company* v. *United States*, 27 Cust. Ct. 22, C.D. 1342 (1951); *United States* v. *J. Gerber & Co., Inc., et al.*, 58 CCPA 110, C.A.D. 1013 (1971) and *John V. Carr & Son, Inc.* v. *United States*, 66 Cust. Ct. 316, C.D. 4209, 326 F. Supp. 973 (1971).

It will be noted that in the *Singer* case, *supra*, which has been cited repeatedly as authority for the several subsequent decisions relating to "castings" as well as "forgings," the Court of Customs and Patent Appeals viewed as inapplicable the general principle of customs law formerly enunciated in the case of *B. A. McKenzie & Co., Inc.* v. *United States*, 3 Cust. Ct. 72, C.D. 206 (1939), i.e.—that material so advanced in manufacture as to cause it to clearly appear that it is incapable of being made into more than one article shall be deemed, even though unfinished, to have been so dedicated to a single use as to find its status as a part of the article. In rejecting the application of this doctrine of "dedication to a single use" as it relates to "rough castings," the

court predicated its decision on the provisions of paragraph 327 of the Tariff Act of 1930, 19 U.S.C. 1001, which provided:

> [As modified by the trade agreement with Canada] Cast-iron andirons, plates, stove plates, sadirons, tailors' irons, hatters' irons, but not including electric irons, *and castings and vessels wholly of cast iron, including all castings of iron or cast-iron plates which have been chiseled, drilled, machined, or otherwise advanced in condition by processes or operations subsequent to the casting process but not made up into articles, or parts thereof, or finished machine parts* ---------- 10% ad val.
> [Emphasis supplied.]

In construing paragraph 327, the court stated (*Id.*, p. 107):

> It seems clear to us that the first provision of paragraph 327, *supra*, above referred to, to wit: "castings and vessels wholly of cast iron," covers castings of iron as they first arrive in commerce in their rough cast condition as they come from the foundry and that the second provision above referred to includes castings of iron which have been "advanced in condition by processes or operations subsequent to the casting process" provided they were "not made up into articles, or parts thereof, or finished machine parts."
>
> The provision for excluding "finished machine parts" convinces us that castings of iron which might be regarded as unfinished machine parts are within the paragraph provided they are not made up into articles or parts thereof.

Again, the court continued (*Id.*, p. 108):

> * * * They are castings of iron; they have not been advanced in condition subsequent to the casting process so as to be made up into articles, or parts thereof, or into finished parts. * * *

The construction of paragraph 327 of the Tariff Act of 1930 relating to castings, thus adopted in the *Singer* case, has been followed by this court in the case of *Ford Motor Company* v. *United States*, 27 Cust. Ct. 22, C.D. 1342 (1951) and in the case of *John V. Carr & Son, Inc.* v. *United States*, 66 Cust. Ct. 316, C.D. 4209, 326 F. Supp. 973 (1971).

Were the provisions of paragraph 327 of the Tariff Act of 1930 in effect at the time of the importation of the merchandise in the instant case, this court, indeed, would be reluctant to stray from the decisions afore-cited. However, the provisions of the Tariff Schedules of the United States existing at the time the merchandise in this case entered the United States are materially different. To predicate a decision in the case at bar, therefore, upon prior court decisions, which, in turn, were based upon a tariff provision no longer in existence, would do

violence to the congressional intent expressed in the present applicable schedule.

In the revised Tariff Schedules of the United States proposed by the Tariff Commission in its classification study of November 15, 1960, it was provided:

Schedule 6, Part 3, Subpart G

Subpart G headnote:

1. This subpart covers only articles of metal which are not more specifically provided for elsewhere in the tariff schedules.

* * * * * * *

657.10 Castings of malleable iron

It is evident from the above schedule that the provisions relating to the classification and description of castings referred to in paragraph 327 of the Tariff Act of 1930 were not only materially changed, but in a great measure deleted. In fact, reference therein was made in item 657.10 only to "castings of malleable iron." Whether the omission of an item relating to "non-malleable castings" was because of inadvertence or was purposeful remains undetermined and unnecessary for the purpose of our present consideration.

However, in the Tariff Classification Study, submitted by the Tariff Commission in its Third Supplemental Report on May 7, 1963 pursuant to section 101 of the Tariff Classification Act of 1962, the following change was provided for with respect to the foregoing schedule:

Substitute the following for item 657.10 (*castings nspf*):

* * *

* * *

Cast-iron articles, not alloyed:

657.09 Not malleable

657.10 Malleable

It will be noted from the foregoing that all references therein to "castings" have been deleted and that in lieu thereof new classifications have been designated in the form of "cast-iron articles, not alloyed, not malleable as well as malleable."

It appears clear to this court, therefore, that in the adoption of item 657.09, Tariff Schedules of the United States, the intended purpose of the Congress was to remove the general preferential low-tariff treatment as it related to "castings" and throughout their successive preliminary stages of processing and to require thereafter the classification of the same under the appropriate existing tariff sched-

ule relating to the finished article to which the merchandise appears to be a part, in conformity with the accompanying interpretative rules.

In those instances where, as a result of the special study by the Tariff Commission, continued preferential low-tariff treatment was deemed appropriate, specific individual tariff schedule items were established.[1]

Again, in other instances specific legislation has been enacted subsequently for the express purpose of restoring to certain articles consisting of unfinished nonmalleable cast-iron parts of machinery, the lower and more favored treatment enjoyed under paragraph 327 of the Tariff Act of 1930.

In connection with the enactment of Public Law 90–638, Senate Report No. 1496 is of particular interest.[2] It is pointed out therein that the purpose of the provision in the proposed legislation relating to nonmalleable iron castings was "to restore to certain unfinished nonmalleable cast-iron parts the tariff rate which was applicable to such parts prior to the effective date of the Tariff Schedules of the United States; that is, August 31, 1963." The nonmalleable cast-iron parts, prior to the adoption of item 662.20, TSUS, had been dutiable under the general provision for cast-iron castings under paragraph 327 of the Tariff Act of 1930.

In its report the Committee stated (*Id.*, p. 4585):

> The general provision for cast-iron castings was not continued in the Tariff Schedules of the United States because it was ambiguous in certain respects. In the Tariff Classification Study preceding the adoption of the tariff schedules, the Tariff Commission made a survey to determine the major imports which were being afforded the 3-percent tariff treatment and created special provisions for such cast-iron products in appropriate portions of schedule 6 of the TSUS in order to continue the substance of the past tariff treatment. No special provision was created to cover the afore-mentioned unfinished parts (other than such parts of machine tools) which are now dutiable under TSUS item 662.20 at 10 percent ad valorem.
>
> Like the Committee on Ways and Means of the House, the Committee on Finance is desirous of restoring the tariff treatment which applied to these castings prior to August 31, 1963. In 1965, Congress restored the tariff treatment which previously applied to rough-iron castings for purification systems and for rollers use in food processing plants. However, it did not deal specifically with rough-iron castings used in bottling or packaging machinery,

[1] See such items as 660.50; 661.92; 662.18; 674.51 and 692.24, Tariff Schedules of the United States, under which lower tariff rates have been provided for specific cast-iron parts. In each item definitive limits relating to the extent of the advancement and processing are included.

[2] U.S. Code Congressional and Administrative News, Vol. 3, 90th Cong., 2d Sess., 1968, pp. 4584–4585.

because it appeared the volume of trade in such castings was insufficient to warrant a special tariff category.

Plaintiff cites *United States* v. *J. Gerber & Co., Inc., et al.*, 58 CCPA 110, C.A.D. 1013 (1971) in support of its contention that the principle laid down in the *Singer* case, *supra*, continues to be applicable in the construction of item 657.09, TSUS. Contrary to the interpretation sought to be placed thereon by the plaintiff, it would appear that the case, in fact, is illustrative of the differentiation intended by the Congress between item 608.25, TSUS, relating to "forgings" and item 657.09, TSUS, relating to what are now described as "cast-iron articles" adopted in the Tariff Classification Act of 1962. The court in the *Gerber* case held that steel forgings were dutiable under item 608.25, TSUS, providing:

	Forgings of iron or steel, not machined, not tooled, and not otherwise processed after forging:	
608.25	Other than alloy iron or steel	10.5% ad val.

In its decision directing specific attention to the fact that item 608.25, TSUS, varied in no material respect from the provision originally contained in paragraph 319(a) of the Tariff Act of 1930, the court stated:

> Plaintiff correctly points out that the Tariff Commission, in formulating the schedules for the 1962 Act, first intended to abandon the old para. 319(a) which provided for:
>
> > *forgings of iron or steel—not machined, tooled or otherwise advanced—by any process—subsequent to the forging process* [emphasis supplied].
>
> and to substitute different language, but then changed its mind, and in the *Tariff Classification Study*, First Supplemental Report, January 1962, Miscellaneous Series TC, recommended the item, 608.25, quoted above, which Congress adopted, and which varies in no material respect from the old para. 319(a). * * * [P. 113]

In view, therefore, of the continuing similarity between item 608.25, TSUS, and the antecedent provisions of paragraph 319(a) of the Tariff Act of 1930, the principle thus first enunciated in the *Singer* case in 1950, although relating to iron castings, properly was reaffirmed.

We fail, however, to note a like similarity continued between item 657.09, TSUS, and the antecedent provisions previously contained in paragraph 327 of the Tariff Act of 1930. In the present tariff schedule the term "castings" has been omitted. All references to the degree of advancement of the article by subsequent processing as well as to the ultimate advancement to the status of a "finished part" have been deleted. Thus, by the adoption of item 657.09, TSUS, it would appear that the intention on the part of the Congress manifestly existed to

abandon the provisions of paragraph 327 of the Tariff Act of 1930. The change in phraseology and the deletion of definitive provisions relating to the extent of processing subsequent to the original casting process are sufficiently significant so as to require a re-examination by this court. In the case of *Volkswagen of America, Inc.* v. *United States*, 68 Cust. Ct. 122, C.D. 4348, 340 F. Supp. 983 (1972), *aff'd*, 61 CCPA 41, C.A.D. 1115 (1974), the function and obligation of this court as it relates to statutory construction has been well expressed (*Id.* p. 130):

> It is our opinion, however, that "heredity" is not a determinative factor in statutory interpretation, particularly when there has been a change of language. Here there has been an entire rephrasing and restructuring of the statutory provision, a circumstance which always warrants a fresh determination of meaning free of the influence of old decisions, interpretations and administrative practices. *Strouse, Adler & Co.* v. *United States*, 3 Ct. Cust. Appls. 184, 186, T.D. 32466 (1912); *United States* v. *New York Cordage Co.*, 18 CCPA 23, 25, 26, T.D. 43977 (1930); *Rice Miller's Association, American Manufacturers* v. *United States and Oberle (Inc.)*, 15 Ct. Cust. Appls. 355, 358, T.D. 42560 (1928); *Cellas (Inc.)* v. *United States*, 18 CCPA 237, 241, T.D. 44405 (1930). In any event, the use of a significant new term is more than enough reason to justify a full examination of the new language in its own right.

It is our opinion that item 657.09, TSUS, necessarily must be restricted to a far more limited construction than that formerly applied to paragraph 327 of the Tariff Act of 1930 as it specifically related to rough castings. It therefore appears that its application properly should be limited to those "cast-iron articles" not more specifically provided for in the Tariff Schedules of the United States.

As previously stated herein, we believe that the intent of Congress was apparent in the adoption of item 657.09, TSUS, to require the classification of castings (as distinguished from forgings) under the existing tariff schedules for articles to which they may relate or be a part—unless another classification is otherwise specifically provided for.

In order to implement such congressional intent, full import must be given to General Interpretative Rule 10(h) providing:

> (h) unless the context requires otherwise, a tariff description for an article covers such article, whether assembled or not assembled, and whether finished or not finished;

Although the articles in question in the instant case are admittedly unfinished, their form and appearance constitute unmistakable evidence of a dedication for use as a shear blade and properly are subject to duty as such an article under item 650.89, TSUS.

We are not unmindful of the prior decision of this court in the case of *John V. Carr & Son, Inc.* v. *United States*, 66 Cust. Ct. 316, C.D. 4209, 326 F. Supp. 973 (1971). Suffice it to say, that for the reasons hereinbefore set forth, we are unable to concur in the construction which the court therein placed upon item 657.09, TSUS.

The cross-motion of the defendant for summary judgment, accordingly, is granted, and the motion of the plaintiff is denied.

Let judgment be entered accordingly.

(C.D. 4570)

MORRIS FRIEDMAN & CO *v.* UNITED STATES

Candlesticks

Brass articles designed for use with candles but in most instances electrified after importation were classified under item 653.37, Tariff Schedules of the United States, and assessed with duty at 15 per centum ad valorem *held* properly subject to duty at 8 per centum ad valorem under item 653.35, Tariff Schedules of the United States. See *Morris Friedman & Co.* v. *United States*, 73 Cust. Ct. 112, C.D. 4561 (1974).

Iron articles claimed to be properly dutiable at 13.5 per centum ad valorem under item 653.95, Tariff Schedules of the United States, or alternatively at 15 per centum ad valorem under item 657.20, Tariff Schedules of the United States, *held* properly subject to duty at 19 per centum ad valorem as classified under item 653.39, Tariff Schedules of the United States. Since the imported articles are illuminating articles, the latter provision is more specific and prevails.

Court No. 69/41729

Port of Philadelphia

[Judgment in part for plaintiff.]

(Decided December 5, 1974)

Allerton deC. Tompkins for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Joseph I. Liebman*, trial attorney), for the defendant.

FORD, Judge: This case involves various types of articles made of brass and other base metal which were described on the invoices as candlesticks, candelabras, lamp bases, lamps, table lamps, sconces, wall decorations, floor lamps, bases, bodies, extensions, canopies, bobeches, finials and covers. All of these articles were designed for use with candles although in a number of instances they were wired for electricity after importation.

The brass articles were classified under item 653.37, Tariff Schedules of the United States, and assessed with duty at the modified rate of 15 per centum ad valorem pursuant to Presidential Proclamation 3822, T.D. 68–9, while the balance of the involved items were classified under item 653.39, Tariff Schedules of the United States, and assessed with duty at the modified rate of 19 per centum ad valorem by virtue of Presidential Proclamation 3822, *supra*.

Plaintiff claims the merchandise assessed at the rate of 15 per centum ad valorem under said item 653.37 is properly subject to duty at 8 per centum ad valorem under item 653.35, Tariff Schedules of the United States, or alternatively at 8 per centum ad valorem under item 654.00, Tariff Schedules of the United States, or item 657.35, Tariff Schedules of the United States, which provides for duty at the rate of 1 cent per pound plus 12 per centum ad valorem. The non-brass articles are alternatively claimed under items 653.95 and 657.20, Tariff Schedules of the United States, which provide for duty at the rate of 13.5 per centum ad valorem or 15 per centum ad valorem, respectively. All of above rates being modified by Presidential Proclamation 3822, *supra*.

The pertinent portions of the statutory provisions involved herein provide as follows:

	Illuminating articles and parts thereof, of base metal:	
	* * * * * * *	
	Other:	
653.35	Table, floor and other portable lamps for indoor illumination, of brass	8% ad val.
	Other:	
653.37	Of brass	15% ad val.
653.39	Other	19% ad val.
	* * * * * *	
	Articles not specially provided for of a type used for household, table, or kitchen use; * * * all the foregoing and parts thereof, of metal:	
	* * * * * * *	
	Articles, wares, and parts, of base metal, not coated or plated with precious metal:	
	Of iron or steel:	
	Not enameled or glazed with vitreous glasses:	
	* * * * * * *	
653.95	Other	13.5% ad val.
	* * * * * * *	

	Of copper:	
654.00	Of brass	8% ad val.
	* * * * * * *	
	Articles of iron or steel, not coated or plated with precious metal:	
	* * * * * * *	
	Other articles:	
	* * * * * * *	
657.20	Other	15% ad val.
	Articles of copper, not coated or plated with precious metal:	
657.30	Of copper, other than alloys of copper; of nickel silver or of cupronickel	* * *
657.35	Other	1¢ per lb.+ 12% ad val.

The record consists of the testimony of Mr. Alfred Denenberg, vice president of Adelphia Lamps & Shades, Inc., the ultimate consignee, and Mr. Rocco A. Angelone, executive vice president of Angelo Bros. Co., the largest distributor in the United States of lamp and lighting fixture parts. Both of these witnesses were called on behalf of plaintiff. In addition, there were received in evidence 23 exhibits offered by plaintiff. Plaintiff has abandoned its claim insofar as it relates to entries 151297, 144450 and 135206 which are accordingly dismissed.

Defendant introduced the testimony of Mr. Jacob Fogelson, executive vice president of the New York Lamp and Shade Manufacturers Association, which is a trade association whose members manufacture and sell portable lamps and shades.

The exhibits and a description are as follows:

Exhibit 1: An illustration of the imported brass item #AD 10/16 ½″ lamp with its imported base #AD 10/5x5″ attached. The base is a decorative addition.

Exhibit 2: An illustration of the imported brass item AD #2261, KOS–5, MAK–101G, Antique Green/Gold. It is approximately 16″ to 18″ high. The black portion was not imported.

Exhibit 3: An illustration of the imported brass item #2233, KO–2100.

Exhibit 4: A sample of the imported brass item #2358, KO–1007, MAK–113. This exhibit is also representative of item KO–4047 under entry 149344, as well as the items KO–1047 (102B) and KM–104 (MAK–103) and (MAK–101) under entry 148895.

Exhibit 5: An illustration of the imported brass item #2362 (KO–1039, P) described on the invoice as Brass Lamp base w. ½″ center

hole and side wire hole, w/o candle spike – Polished finish. It consists of 4 pieces and was imported in an unassembled condition.

Exhibit 6: A sample of the imported brass item #2363 (KO–1039, 102–B). It consists of four unassembled pieces in a box, and is the same as exhibit 5 except in a different finish.

Exhibit 7: An illustration of the imported brass item #2335 (K 1019, MAK–P) described on the invoice as Brass Lamp Base w/o candle spike and side wire hole – Polished finish.

Exhibit 8: An illustration of the imported brass item #2273 (KOS–2, MAK–101G) except that the circled base portion was not imported.

Exhibit 9: An illustration of the imported brass item #2284 (KOS–1, MAK–101G), except for the mounting which was added in this country.

Exhibit 10: An illustration of the imported #2181 (638B) Iron Candlestick w. ½" center hole, w/o side wire hole, dark brown finish, except that the circled bottom mounting was not imported.

Exhibit 11: For identification – Withdrawn.

Exhibit 12: An illustration of the imported #2180 (647G) Iron Candlestick w. ½" center hole, w/o side wire hole, dark antique green finish.

Exhibit 13: An illustration of the imported brass item #1151, Re Alsi 9, Sets Candelabras. It is 12 or 13 inches high.

Exhibit 14: An illustration of the imported iron item #1057 – 4 light table lamp two sections, with white ceramic flowers. It is imported in two parts and is approximately 15 to 18 inches high. The circled white portion on the bottom was not imported.

Exhibit 15: An illustration of the imported iron item #1058 – 5 light table lamp, two sections, with iron roses, gold finish. It is imported in two parts.

Exhibit 16: An illustration of the imported iron item #1016 Pineapple lampbase 35 in., pineapple natural colors, base and leaves gold finish. It is approximately 26 to 27 inches high. This exhibit is also representative of the item #RL/44 polychrome roses lamp base, white and green under entry 151546.

Exhibit 17: An illustration of the imported iron item #PT/66/7 – 2 light Empire sconce (6/green-gold finish; 6/white-gold finish). The depicted wax candles were not imported. This exhibit is also representative of the item #AN/20 Pineapple Sconce, pineapple in natural colors, gold finish leaves, under entry 151546.

Exhibit 18: A catalogue of the Japanese manufacturer entitled "Cast Brasswares" "Bronzewares" Takaoka, Japan, which on the circled portions of page 4 depict the items #KM – 102 (MAK–P) and (MAK–102B).

Exhibit 19:
Exhibit 20:
Exhibit 21:
Exhibit 22:
Exhibit 23:
} Illustrations of lamps handled by Angelo Bros. Company that are similar in their primary purpose, fashion, designs, function, and use to the articles in litigation that are exhibits 1, 3, 4, 5, 6, 7, 10, 12, 17.

Exhibit 24: Illustrations of an Aladdin lamp (#5270) which is designed to take a single illuminate and #5271 which is designed to take two illuminates.

The first witness called on behalf of plaintiff, Mr. Alfred Denenberg, identified the various exhibits depicting the imported merchandise and testified that many were offered for sale mounted on a base and having an electric socket added. The witness also indicated that the merchandise covered by exhibits 14 through 17 were made from sheet metal which he believed to be iron although he was not a metallurgist nor did he ever have an analysis performed. In his opinion candleholders are lamps designed to be used with an illuminant such as a wax candle or electricity. All of the imported articles, according to the witness, are in their imported condition lamps because they are designed for artificial illumination. The witness further indicated that all of the imported articles are portable and are used for indoor illumination. The sconce, plaintiff's exhibit 17, according to the witness is as portable as a painting.

Mr. Denenberg then testified that a majority of the imported articles were not sold in their condition as imported but only after adding electrical devices. To accomplish this a bolt or threaded pipe is inserted and a socket screwed on. A wire is then connected to the socket. In addition bases or mountings were sometimes added.

The next witness called on behalf of plaintiff was Mr. Rocco A. Angelone who testified that he understood the term lamp to be either an electric light bulb such as filament type bulbs or any device which was designed to accommodate an illuminant. The witness considered candlesticks to be lamps which are used on tables with candles or electricity. Mr. Angelone then identified several exhibits which were received as illustrations of articles sold by his firm which were alleged to be comparable to those involved herein. According to Mr. Angelone the candlesticks which possess spikes utilized this feature in order to protrude inside a candle to permit it to hold the candle firmly in place.

The witness was of the opinion that most of the imported articles would be wired for electricity but that the imported articles could be utilized in their condition as imported with a candle. He was further of the opinion that said articles are portable and are used for indoor illumination.

Defendant called on its behalf Mr. Jacob Fogelson who testified that he was familiar with the ultimate consignee as it had been a member of the Philadelphia association for many years and it exhibited at the lamp shows operated by the New York Lamp and Shade Manufacturers Association. The witness has visited 50 to 60 plants of members of this association and has observed the methods of assembly of lamps. A lamp according to Mr. Fogelson was a portable lamp having an electric cord and plug providing electrical energy. In his opinion candleholders and candlesticks are not lamps whereas candelabras and sconces would be considered lamps only if electrified. The witness was also of the opinion that a lamp could have gas or oil as an illuminant.

The entry papers have been received in evidence without being marked. By virtue of the pleadings, there is no question of fact that the involved articles are composed of base metal and are not coated or plated with precious metal. In addition, there is no dispute that the brass articles are not composed of nickel silver or of cupro-nickel.

Since the question of classification is based upon component material, the items covered by the entries set forth in schedule "A," annexed hereto and made a part hereof, involve brass items while those covered by schedule "B," annexed hereto and made a part hereof, cover other base metal articles involved herein.

Insofar as the brass items covered by schedule "A" are concerned, I am of the opinion as indicated in *Morris Friedman & Co.* v. *United States*, 73 Cust. Ct. 112, C.D. 4561 (1974), that articles designed to utilize candles are lamps. The record establishes the imported articles to be table, floor or portable type lamps used for indoor illumination as prescribed by item 653.35, *supra*. The testimony of defendant's witness, Fogelson, by which the term lamp would only include a portable lamp operated by electricity, oil or gas is not broad enough to encompass the articles intended to be covered by item 653.35, *supra*, as indicated in C.D. 4561, *supra*. The record herein is sufficient to establish that such merchandise is considered lamps and not merely parts thereof even though in some instances the articles were imported in an unassembled condition and must be assembled before use with a candle. The sconce is in my opinion, and based upon the reasoning

set forth in C.D. 4561, *supra*, with respect to exhibit 1 therein and upon the record herein, a portable lamp. The claim relating to merchandise covered by schedule "A" is sustained.

With respect to the articles covered by schedule "B," it is apparent and plaintiff has conceded if the court finds said articles to be illuminating articles, the provisions alternatively claimed, i.e., 657.20 and 653.95, *supra*, will not apply since the classified provision, item 653.39, is more specific.

I am unable to ascertain any difference in the basic function of the articles covered by schedules "A" and "B". Accordingly, the claims relating to the non-brass articles covered by schedule "B" are dismissed.

Judgment will be entered accordingly.

(C.D. 4571)

EATON MANUFACTURING CO. ET AL. *v.* UNITED STATES

Marine engines and outdrives

CLASSIFICATION AS ENTIRETY—SEPARATE ENTITIES—REMAND FOR VALUE DETERMINATION—RELATIVE SPECIFICITY (PARTS OF PLEASURE BOATS VS. SPEED CHANGERS)

Marine engines and outdrives imported at Seattle and New York were classified, in the case of the Seattle entry, under TSUS items 660.44 (engines) and 696.15 (outdrives), and in the case of the New York entries, under item 696.15 (engines and outdrives), and it is claimed by the importers, among other things, that the engines and outdrives are separate articles, and that the engines should be classified under item 660.44 and the outdrives under TSUS item 680.45 as fixed ratio speed changers.

The evidence in the record establishes that the engines and outdrives are independent, are not physically connected when imported, are supported by different parts of the boat in which they are installed, that the engine is the power source for propulsion of the boat, and that the outdrive functions as the transmission of the boat.

HELD, the engines and outdrives cannot be deemed an entirety for tariff purposes, but must be treated as separate entities. As separate entities classification of the outdrives is controlled by the holding of the Court of Customs and Patent Appeals in C.A.D. 1076 classifying them as fixed ratio speed changers under item 680.45. The engines are properly classifiable under item 660.44. As no separate values were returned for the engines and outdrives covered by the New York entries, the appraisements and liquidations under these New York entries are null and void, necessitating remand proceedings pursuant to 28 U.S.C.A., section 2636(d).

United States Customs Court, Third Division

Court Nos. 65/13083, 67/17604, 67/70250(A), 68/46572

Ports of Seattle and New York

[Judgment for plaintiff in part; remanded in part.]

(Decided on remand [C.A.D. 1076] December 5, 1974)

Sharretts, Paley, Carter & Blauvelt **(*M. Barry Levy* of counsel) for the plaintiffs.**

Carla A. Hills, **Assistant Attorney General (*John A. Gussow*, trial attorney), for the defendant.**

Before RICHARDSON and LANDIS, Judges

RICHARDSON, Judge: These cases involving marine engines and outdrives imported at Seattle and New York from Sweden are before this court a second time following the decision of the Court of Customs and Patent Appeals in *Eaton Manufacturing Co., et al.* v. *United States*, 60 CCPA 23, C.A.D. 1076, decided November 30, 1972 on cross-appeals from our decision in *Eaton Manufacturing Co. et al.* v. *United States*, 66 Cust. Ct. 293, C.D. 4207 (1971). In C.A.D. 1076, the appeals court, under suit No. 5476, reversed our dismissal of these protests which had been based on jurisdictional grounds, and remanded them, holding that we had juridsiction to decide the protests on their merits.

In protest 65/13083, involving a Seattle entry, the engines were classified under TSUS item 660.44 as internal combustion engines; and the outdrives were classified under TSUS item 696.15 as "Parts of yachts or pleasure boats owned by a resident of the U.S. or brought into the U.S. for sale or charter to a resident thereof." In the protest the importer initially claimed that the outdrives should be classified as an entirety with the engines under item 660.44. By way of amendment to the protest the importer now claims, among other things, that the outdrives should be classified under TSUS item 680.45 as fixed ratio speed changers.

In protests 67/17604, 67/70250(A), and 68/46572, involving New York entries, the engines and outdrives were classified as entireties under item 696.15 as parts of yachts or pleasure boats. The importer claims, among other things, either in the initial protests or by way of amendment that the merchandise is classifiable as separate entities—the engines under item 660.44 and the outdrives under item 680.45.

The case is submitted upon the record as originally made. The entry papers* show that an equal number of engines and outdrives were imported in each shipment, and, except as to the entry covered by protest 65/13083, were invoiced at a single unit price. However, the testi-

* Entry No. 958584 of protest 67/17604 is not before the court, and is said to be missing.

mony indicates that engines and outdrives are independent. That is, an engine may be imported and used with various outdrives or an outdrive may be imported and used with various engines. The two articles are not physically connected when imported, and they are usually not imported in equal numbers. Several of the witnesses agreed that an estimated 90% of imported outdrives and engines are used in the manufacture of pleasure boats with the remainder being used in various types of commercial boats and naval vessels.

The imported merchandise is sold to boat manufacturers. The engine is the source of power for the propulsion of the boat. And the outdrive functions as a transmission.

It is to be noted that classification of the involved merchandise at the port of Seattle differed from that made at the port of New York. And this variance is significant in the light of the defendant's position respecting plaintiffs' claims herein. At Seattle the collector of customs treated the engines and outdrives as separate entities, and considered the "and parts thereof" provision of item 696.15 to be applicable only to parts of foreign-built yachts and pleasure boats. At New York the regional commissioner of customs treated the engines and outdrives as an entirety, and did not consider the parts provision of item 696.15 to be limited to parts of foreign-built yachts and pleasure boats. The defendant contends that the classification reflected in the New York entries represents the proper classification of the engines and outdrives in issue.

The competing tariff provisions referred to herein read as follows:

[Classified]		
	Yachts or pleasure boats, regardless of length or tonnage, whether motor, sail, or steam propelled, owned by a resident of the United States or brought into the United States for sale or charter to a resident thereof, whether or not such yachts or boats are brought into the United States under their own power; and parts thereof:	
	Yachts or pleasure boats:	
	* * * * *	
696.15	Parts ----------	12% ad val. 10.5% ad val.
[Claimed]		
	* * * * *	
	Gear boxes and other speed changers, and parts thereof:	
680.45	Fixed ratio speed changers * * * and parts thereof----------	9% ad val. 8% ad val.

With respect to the scope of item 696.15, our appeals court has ruled in C.A.D. 1076, under suit No. 5478 involving importations of outdrives only, that the "and parts thereof" provision of item 696.15 is not limited to parts of foreign-built yachts and pleasure boats.

With respect to the entireties issue, it is clear from the evidence noted herein that the engines and outdrives are separate entities. And apart from the evidentiary facts noted it was brought out in the testimony that the engines and outdrives are supported by different parts of a boat in which they are installed—the engine by structural members, and the outdrive by the transom. Thus, apparently the only connection that is made between the engine and the outdrive in application is some sort of a coupling of their drive shafts. And this coupling is insufficient to destroy the individual character of each article. See and compare *Columbia Shipbuilding Co. et al.* v. *United States*, 11 Ct. Cust. Appls, 281, 283, T.D. 39085 (1922).

A different conclusion might be feasible had it been shown that the engines and outdrives were imported with a common base to support them. See TSUS, Schedule 6, Part 4, headnote 3. But as the record stands no basis exists for concluding that the engines and outdrives should be treated as an entirety. Consequently, we are of the opinion that the collector at Seattle was correct in treating the engines and outdrives as separate entities.

Inasmuch as the evidence at bar compels the conclusion that the engines and outdrives in issue are separate entities for tariff purposes, the holding of our appeals court in C.A.D. 1076 under suit No. 5478 is dispositive of the remaining issues in the case insofar as outdrives are concerned. [And there appears to be no dispute that the engines *per se* are classifiable under item 660.44 once their status as separate articles is determined.] In C.A.D. 1076 not only did our appeals court hold that the outdrives are classifiable under the parts provision of item 696.15, but that court also held that the outdrives were more properly classifiable under item 680.45 as claimed herein. The court said at page 33 in 60 CCPA:

> * * * Power transmission may occur without speed change, but speed change necessarily includes power transmission. We think it clear from the testimony and exhibits that the outdrives are fixed ratio speed changers, and we therefore hold them to be properly classifiable under item 680.45 TSUS. Since that provision is relatively more specific than either 696.15 or item 678.50, it is the correct classification.

In view of the holding in C.A.D. 1076 under suit No. 5478, plaintiffs' claim for classification of the outdrives under item 680.45 is sustained. With respect to protests 67/17604, 67/70250(A), and 68/46572 plaintiffs' claim for classification of the engines under item 660.44 is also sustained. However, inasmuch as no separate values were

returned in the appraisements for the engines and outdrives the subject of protests 67/17604, 67/70250(A), and 68/46572, the appraisements and ensuing liquidations underlying these protests are null and void.

Judgment will be entered herein accordingly.

(C.D. 4572)

BRENTWOOD ORIGINALS *v.* UNITED STATES

Textile furnishings

BOLSTER CASES—BEDDING—SHEETS AND PILLOWCASES

Importations consisting of covers for wedge-shaped cushions and pillowlike cushions with short arm extensions both chiefly used for the support of persons in bed held to be classified within the TSUS language for "sheets and pillowcases (including bolster cases)."

Court No. 71-11-01871

Port of Los Angeles

[Judgment for plaintiff.]

(Decided December 9, 1974)

Glad, Tuttle & White (*Robert Glenn White* and *Edward N. Glad* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Gilbert Lee Sandler*, trial attorney), for the defendant.

WATSON, Judge: This action raises the question of the proper classification of imported velveteen and corduroy covers for articles referred to in the entry papers as "bedrests" and "wedge bolsters." The merchandise in question was classified as unornamented cotton furnishings of pile or tufted construction, the velveteen under item 366.60, the corduroy under 366.63 both as modified by T.D. 68-9 and dutiable at the respective rates of 34% and 42.5% ad valorem.

Plaintiff claims classification as unornamented cotton bolster cases under item 363.30 as modified by T.D. 68-9 dutiable at the rate of 10.5% ad valorem..

The articles in question are designed to enclose a long wedge-shaped cushion and a pillow-shaped form with two short arm extensions. The testimony establishes to my satisfaction that the filled articles are chiefly used on beds to provide support for individuals in the multitude of uses other than slumber to which beds are put. I have

in mind such uses as watching television or reading while in bed.

The imported articles conform to my understanding of the term "bedding" as explained in headnote 1(a) to subpart B of part 5 of schedule 3[1] as articles chiefly used as bed furnishings. I note that nothing in the headnote suggests that the articles in question be used strictly for a "sleeping" function, a limitation advocated by defendant. On the contrary, the inclusion of "bedspreads" and "coverlets" suggests the inclusion of articles which, though used to furnish a bed, are not ordinarily used for sleeping.

Since the imported articles appear to belong within the ambit of the provisions for "bedding" it remains only to be seen if they are bolster cases within the meaning of that term in the description "Sheets and pillowcases (including bolster cases)." Based upon what I consider the common meaning of the term bolster cases and the general suitability of the classification under the provisions for bedding, I reach an affirmative conclusion on this point. While there is some authority for a definition of a bolster as a long, cylindrical pillow, the better and more general view is that a bolster is any sort of cushion chiefly used to support an individual on a bed. It would not comport with my view of the significance which must be given the language of the tariff schedules if one were to conclude that the term "bolster cases" was mentioned only to include one additional shape of pillow. Surely a cylindrical-shaped pillow would fall under the term "pillow" without the necessity of further elaboration. To my mind the essential defining characteristic of a bolster is to be found in its function of support, which is an ascertainable characteristic, and not in its shape, which is a variable subject to the infinite variations of which human ingenuity is capable. I would therefore say that bolster cases are the covers of articles other than conventional pillows which are chiefly used to support persons resting on a bed.

I am aware of cases decided under paragraph 911(b) of the Tariff Act of 1930 which interpreted the language "sheets and pillowcases" to exclude corduroy pillowcases in part on the ground that the statutory phrase was one which naturally suggested the common items used in sleeping on a bed.[2] In view however of the different structure and wording of the tariff schedules, these cases, as well reasoned as they were, are not controlling or influential as regards the new language. As mentioned earlier, the new explanation of the basic term "bedding" appears to include "non-sleeping" articles and the addi-

[1] The relevant portion of the headnote reads:

1. For the purposes of this subpart—

(a) the term "bedding" means sheets, pillowcases, blankets, bedspreads, coverlets, quilts, comforters and other articles, by whatever name known, chiefly used as bed furnishings * * *.

[2] See, *W. J. Byrnes & Co. of L.A., Inc., Fortune Trading Co., Inc.* v. *United States*, 47 Cust. Ct. 118, C.D. 2290 (1961) and *Victor B. Handal & Bro., Inc.* v. *United States*, 55 Cust. Ct. 263, C.D. 2588 (1965), *aff'd, Same* v. *Same*, 54 CCPA 18, C.A.D. 895 (1966).

tion of specific mention of bolster cases in my opinion indicates a scope considerably beyond that of the commonly known phrase "sheets and pillowcases." Again I cannot see why Congress would make special mention of a single rather than obscure variety of pillowcase. I prefer the view that Congress was more meaningfully indicating coverage of a variety of bed furnishings, related to pillowcases but not strictly belonging to that category.

In conclusion, I note that defendant's position is correct that protest number 2704–1–000893 relating to entry 71–119826 did not protest the items invoiced as "Corduroy Cushion Covers 'Bedrests' " and that the plaintiff's claim as it relates to that particular merchandise must be overruled. Accordingly, I grant defendant's motion to dismiss plaintiff's claim as it relates to the aforesaid corduroy covers in entry 71–119826.

As to the remaining merchandise, plaintiff's claim for classification pursuant to item 363.30 as modified by T.D. 68–9 as unornamented cotton bolster cases is correct and judgment will be entered accordingly.

(C. D. 4573)

Montgomery Ward & Co. *v.* United States

Radio-phonograph-tape player combination

Radio–Phonograph–Tape Player Combination

A combination article which contains a tape player as one of the important elements of the combination is not a combination of articles described in the superior heading preceding item 685.10 since tape players are not described therein. Accordingly, the importation was incorrectly classified as a radio-phonograph combination under item 685.30 and is not classifiable as other combinations under item 685.50. The importation is held to be a machine not specially provided for under item 678.50.

Court No. 72–1–00141

Port of New York

[Judgment for plaintiff.]

(Decided December 18, 1974)

Barnes, Richardson & Colburn (*Irving Levine* of counsel) for the plaintiff.
Carla A. Hills, Assistant Attorney General (*John N. Politis*, trial attorney), for the defendant.

Watson, Judge: The importation in dispute is described on the invoices as an "Airline AM/FM Stereo Phono 8 Track Assembly with

2 Speakers * * *." As imported it consists of a cabinet containing a radio and an 8-track tape player and two separate speakers. The top of the cabinet is cut to accommodate a record turntable which is added after importation. The imported article was classified as a radio-phonograph combination under item 685.30 of the Tariff Schedules of the United States, as modified by T.D. 68–9, and assessed with duty at the rate of 8% ad valorem.

Plaintiff makes two alternative claims for the imported article, the first as a machine not specially provided for or parts thereof pursuant to item 678.50 of the TSUS, as modified by T.D. 68–9 (dutiable at the rate of 6% ad valorem), and the second as an electrical article or parts not specially provided for under item 688.40 of the TSUS, as modified by T.D. 68–9 (dutiable at the rate of 6.5% ad valorem). Defendant makes an alternative claim for classification under item 685.50.

The provisions under which the importation was classified (item 685.30) and under which defendant makes its alternative claim (item 685.50) are among those intended to specifically govern articles or combinations of articles set out in the heading immediately preceding item 685.10 which reads as follows:

> Radiotelegraphic and radiotelephonic transmission and reception apparatus; radiobroadcasting and television transmission and reception apparatus, and television cameras; record players, phonographs, tape recorders, dictation recording and transcribing machines, record changers, and tone arms; all of the foregoing, and any combination thereof, whether or not incorporating clocks or other timing apparatus, and parts thereof:

The classification of the importation as a radio-phonograph combination was obviously incorrect. The sample of the importation and the testimony clearly establish that an 8-track tape player is a major part of the importation and a source of listening material of equal importance to the radio and phonograph portion. The tape player is manifestly not a subsidiary or auxiliary function and it is therefore incorrect to exclude it from consideration in classifying the importation. The importation is most certainly more than a radio-phonograph combination.

The defendant advances an alternative claim for classification of the importation pursuant to item 685.50 providing for "other" articles and combinations of articles of the type named in the above-quoted heading. This claim fails for the basic reason that a tape player is not an article described in the aforementioned heading. Since item 685.50 covers articles or combinations of articles only by reference to those described in the heading, it cannot logically be said to cover combination articles, one significant element of which is not within the scope of the descriptive language of the heading.

Defendant points out that, although tape players are not provided for by name in the superior heading under discussion, they perform

one function which is identical to that performed by a tape recorder; namely, that of playing material recorded on magnetic tape. I cannot, however, accept the reasoning by which this identity of a single function is sufficient to bring the tape player within the "ambit" of the heading. The ambit of this provision is no greater than the ambit of its language. In other words, I fail to see how the "ambit" of a provision which covers certain named articles or combinations thereof can be greater than the individual "ambits" of the articles it names or their possible combinations. To say that the combination articles which may be covered by these provisions are more varied than the combinations obtainable from the articles in the superior heading, offends my sense of mathematics which says that the whole cannot be greater than the sum of its parts. Also offended is rule 10(c)(i) of the tariff schedules general interpretative rules which provides that a superior heading cannot be enlarged by inferior headings indented under it.

The articles named in the superior heading are not given as clarifying examples of a general type, i.e., exemplars. They are the descriptions and names of the dutiable articles themselves. Articles which are not named or described are not included either directly or in combination. The tape player is not a tape recorder by any stretch of meaning or of the imagination and this is conceded by defendant. A combination in which a tape player is present as an obviously important segment is therefore not a combination envisioned by the provisions under which the importation was classified or under which the defendant makes its alternative claim. Contrary to defendant's argument, I do not discern a general congressional intention to include all varieties of magnetic tape media in these provisions. The plain meaning of the language of the superior heading simply does not permit so broad an interpretation.

I note in passing defendant's contention that the word "phonographs" used in the superior heading may be construed to describe a tape player. Although there may be sources which use this word to describe any device which reproduces sound, it is a very loose usage and definitely incorrect in this context.

Turning to plaintiff's first claim, I find merit in the contention that the importation is properly classifiable pursuant to the provision for "machines not specially provided for" in item 678.50. The imported article has considerable mechanical content and the testimony establishes to my satisfaction that the mechanical nature of the importation is sufficient to constitute it a machine within the common meaning of that term. In its completed form the tape player portion acts mechanically on the tape cartridges inserted into it; the record player acts on the records with a high degree of mechanical complexity. The radio contains important mechanical elements. Considered as a whole the nature and function of this article conforms to my understanding

of the term machine. See, *Trans Atlantic Co.* v. *United States*, 54 CCPA 75, C.A.D. 909 (1967). In sum, the most specific classification to which this article can be subjected is one which is based on its being a machine for the reception and reproduction of sound.

In consequence, plaintiff's alternative claim for classification pursuant to item 688.40, as modified by T.D. 68–9, as electrical articles and parts not specially provided for, need not be discussed.

Judgment will be entered accordingly.

(C.D. 4574)

MEGO CORP. *v.* UNITED STATES

Toys—Games—Sport equipment

GAMES

The term "game" for tariff purposes refers to a competition or contest involving skill, chance or endurance or any combination of these elements, and which is played according to rules with the objective of winning as the goal.

GAMES

Under the tariff schedules, all games and game equipment are now provided for in schedule 7, part 5, subpart D of the tariff schedules—the congressional intent being to remove all games, including toy games, from the toy provisions.

GAMES

Items 734.20 and 735.20—which cover, among other things, game machines and game equipment—are not "chief use" provisions.

SPORT AND BASEBALL EQUIPMENT

Unlike games and game equipment, neither sport equipment nor baseball equipment is exempted from the pervasive character of the toy provisions of the tariff schedules.

Court Nos. 70/62273, etc.

Port of New York

[Judgment for defendant.]

(Decided December 19, 1974)

Allerton deC. Tompkins for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Steven P. Florsheim*, trial attorney), for the defendant.

MALETZ, Judge: The problem in this consolidated action concerns the proper tariff classification of merchandise invoiced as "Baseball Game" that was exported from Hong Kong and entered at the port

of New York in August and October 1969. The merchandise was classified by the government under item 737.90 of the tariff schedules, as other toys, not specially provided for, and assessed duty at the modified rate of 28 percent ad valorem.[1] The government claims alternatively that the merchandise is classifiable under item 737.80, as toys, not specially provided for, having a spring mechanism, and thus dutiable at the modified rate of 33 percent ad valorem.

Plaintiff claims alternatively that the imported merchandise is properly classifiable (1) under item 735.20, as game or sport equipment, dutiable at the modified rate of 16 percent ad valorem; or (2) under item 734.20, as game machines, dutiable at the modified rate of 8 percent ad valorem; or (3) under item 734.56, as other baseball equipment, dutiable at the modified rate of 12 percent.

The pertinent provisions of the tariff schedules read as follows:

Classified under:		
	Subpart E [Part 5, Schedule 7] headnotes:	
	1. The articles described in the provisions of this subpart (except parts) shall be classified in such provisions, whether or not such articles are more specifically provided for elsewhere in the tariff schedules, but the provisions of this subpart do not apply to—	
* * * * * * *		
	(iii) games and other articles in items 734.15 and 734.20, toy balls (items 735.09–.12), and puzzles and games in item 735.20 (see part 5D of this schedule).	
	2. For the purposes of the tariff schedules, a "toy" is any article chiefly used for the amusement of children or adults.	
* * * * * * *		
	Toys, and parts of toys, not specially provided for:	
* * * * * * *		
737.90	Other	28% ad val.
Alternative classification claimed by government:		
	Toys, and parts of toys, not specially provided for:	
* * * * * * *		

[1] The modified rates specified here and hereafter were effected by Pres. Proc. 3822, T.D. 68–9.

737.80	Toys having a spring mechanism----	33% ad val.

Classification claimed by plaintiff [Subpart D, Part 5, Schedule 7]:

735.20	Puzzles; game, sport, gymnastic, athletic, or playground equipment; all the foregoing, and parts thereof, not specially provided for----------	16% ad val.[2]

Alternative classification claimed by plaintiff:

734.20	Game machines, including coin or disc operated game machines and including games having mechanical controls for manipulating the action, and parts thereof ----------	8% ad val.

Alternative classification claimed by plaintiff:

Baseball equipment and parts thereof:

734.56	Other ----------	12% ad val.

I

The imported merchandise consists of (1) a device which projects balls by means of a mechanism having a battery operated, coil-spring controlled pitching arm; (2) a set of eight small plastic, hollow balls, each approximately one and one half inches in diameter; and (3) a plastic, hollow telescoping bat, which, when extended to its full length, is 25 inches long. The projecting device has a rack for holding the balls which is designed to deliver the balls one-at-a-time to the pitching arm. In turn, the pitching arm is designed to propel the balls one-at-a-time to a batter standing (with the bat) a few yards from the mechanism. The pitching arm may be adjusted by placing a key attached to the coil spring into one of a number of slots thereby changing the tension on the arm and controlling the height and speed at which the ball is propelled.

The device contains an on-off electric switch connected to the battery. When the switch is turned on, the battery supplies power to a motor which activates a lever that revolves and activates the spring controlled pitching arm, which then propels each ball at constant time intervals to a distance of some 20 feet. About eight seconds elapse between the time the switch is turned on and the first ball projected, which is sufficient time to enable the user to turn on the device and then move to the batter position.

[2] In paragraph 10 of its complaint, plaintiff also claimed alternatively that the imported merchandise consisted of gymnastic, athletic, or playground equipment within the meaning of item 735.20. However, plaintiff, in its brief, has not set forth any argument in support of these claims and they are therefore deemed abandoned.

As imported, the merchandise was packed in a carton on which was printed the following:

Professional
HOME RUN
Adjustable Pitching Machine
BE A REAL SLUGGER – PRACTICE AT HOME
* Automatic Delivery
* Adjustable Pitching Height For All Ages
* Safe Non-Toxic Plastic Bat and Balls
* * * * * * *
FUN FOR EVERYONE

Also, as imported, the carton contained an instruction sheet which set forth instructions on assembly and use of the merchandise and also described how one or more persons "can play baseball" therewith. This instruction sheet read as follows:

The "HOME RUN BASEBALL GAME" by Mego is designed to operate in the same manner as the famous "IRON MIKE" Pitching Machine used by the Major League Baseball Clubs. To operate simply insert D battery in the direction as indicated and close door. Take the ball chute and insert the pin into the machine and take the chute holder and insert into the holes as indicated in *figure* A and rest chute in brackets. Insert key on lower end of the spring into the slots provided on the bottom of machine. By moving the key into the different slots you can adjust the height and speed of the pitch. Put balls into the chute and turn the switch on. If the machine does not start immediately, push on gently toward the back of the machine, machine will now operate correctly.

To open bat, grasp both ends and pull outwards with twisting motion. You are now ready to play baseball.

GAMES

One of the ideal features of the "HOME RUN BASEBALL GAME" is that one person can play baseball. Set-up the machine at an appropriate distance and mark off on the wall at 2 foot intervals, single, double, triple and home-run. Turn on the machine, the balls that hit before the wall are out. Any balls above the first line is a single, above the second a double and so on. This way you can enjoy batting practice.

For 2 people, one bats and one fields alternatively, this makes it much more difficult to score runs.

For 3 or more players, use the machine as the pitcher and position the players as you would any normal baseball game. Children of different ages can play together since the machine can be adjusted to the appropriate height and speed.

NOW LETS PLAY BALL!

The imported merchandise was designed for boys in the seven to twelve age bracket; was sold at retail for about $7.00; and was adver-

tised in plaintiff's catalogue as "Action Toys." It was patterned after the "Iron Mike" which is a baseball pitching machine that will throw a baseball 60 feet at different speeds and is used by baseball teams, and at batting ranges, for batting practice.

The nature of the merchandise is such that it can be operated and used by a single person. In this connection, a single person will load the ball rack with balls and turn the projecting device on. The time lag between the projections of the balls allows the person to take a batting stance at the appropriate distance and position from the device and attempt to hit the projected balls with the bat. Once all the balls have been projected, the person shuts off the device and the process can be repeated. However, the merchandise *can* be used by more than one person, such as in a game of "single, double, triple." [3]

II

At the trial, two witnesses testified for plaintiff, while defendant failed to call any witnesses. Plaintiff's first witness, Neal Kublan, director of creative projects for plaintiff, testified that the imported article acts as a substitute pitcher and was designed to teach a young boy how to hit a ball. He added that he knew of no other use for the article other than pitching a ball. The witness further testified that the vast majority of his observations as to the use of the article were made in retail sales demonstrations in stores in various parts of the United States where children would be afforded the opportunity to hit a few balls. Also, Kublan stated that at one time he was co-manager of a Little League team and used the article in the basement of a school to teach the children on the team how to hit. In addition, he testified that the article was used in plaintiff's offices by plaintiff's employees to play "single, double, triple," and that the most experience he personally had with the article was using it in conjunction with friends or children to play this game.

Plaintiff's second witness, Martin Abrams, the president of plaintiff, testified that the article was developed from the "Iron Mike," and that he had seen it used throughout the United States about fifty to a hundred times over a four-year period. More particularly, he stated that he had seen it used in demonstrations in retail stores; on location at a baseball field in Florida where plaintiff had some six children participate in the filming of a TV commercial of the article; and in friends' homes about five to six times in 1969 and about the same number of times in 1970. He further indicated that he had played

[3] In this game, one or more persons field, one or more persons bat, and the article acts as the pitcher. If the batter hits the ball past the pitcher, it is a single, double, triple or home run depending upon the height. However, if a fielder catches the ball on the fly, it's an out.

with it in the office in the manner indicated by the previous witness. On the basis of his observations, he stated that the article was used extensively by persons for competitive purposes to refine their skill and do better than the next person and was also used "occasionally" for noncompetitive purposes. The witness concluded that the article was not chiefly used to teach batting, but rather was chiefly used as a game in a competitive atmosphere. He further stated that even were it to be assumed that the chief use of the article is for teaching, it would still be a game. Thus he testified (R.99):

> Even assuming that it was to teach them, it would still constitute a game.
>
> * * * * * * *
>
> Because within the frame of reference, it's teaching them how to play a game. It's teaching them a skill to perfect which falls within a "game" premise.

III

We turn now to plaintiff's claims that the merchandise is properly classifiable under item 735.20 as "game equipment" or under item 734.20 as "game machines." As to these claims, it is to be noted that headnote 1(iii) of schedule 7, part 5, subpart E (previously quoted) provides that an article which is both a toy and a game or game equipment is classifiable under the provisions for games or game equipment rather than under the provisions for toys. Thus the key question with respect to these claims by plaintiff is whether the merchandise in issue is a "game" regardless of whether it is also a toy. See e.g., *Mego Corp.* v. *United States*, 62 CCPA —, —, C.A.D. 1137, slip op. at 7 (Nov. 21, 1974); *Montgomery Ward & Co.* v. *United States*, 66 Cust. Ct. 233, 234 (1971).[4]

"The common meaning of the term 'game' for tariff purposes refers to a competition or contest which involves skill, chance or endurance or any combination of these three elements, and which is played according to rules with the objective of winning." *Mego Corp.* v. *United States*, 67 Cust. Ct. 19, 24, C.D. 4246 (1971). See also e.g., *Mego Corp.* v. *United States*, *supra*, C.A.D. 1137, slip op. at 7. Further, as this court stated in *Montgomery Ward*, *supra*, 66 Cust. Ct. at 238:

> * * * Of course, a game is necessarily a contest, but one which may be between two or more persons, or between one person and the game itself. For example, a slot machine can only be played by one person at a time * * *. A pinball machine can only be played

[4] As the court pointed out in *Montgomery Ward*, *supra* at 236: "[U]nder the tariff schedules, all games and game equipment are now provided for in schedule 7, part 5, subpart D—the congressional intent being to remove all games, including 'toy games,' from the toy provisions."

> by one person at a time and is a contest between man and machine which involves an element of skill, while the slot machine is essentially a game of chance. Darts can be played or practiced by one person alone simply as a test of skill of the player, with no necessity for an opposing player. All the above are "games" or "game machines" within the provisions for "games and sporting goods" in schedule 7, part 5, subpart D of the tariff schedules, and do not necessarily involve more than one person in their playing. The point is that these activities are games since they result in a "score" measuring one's skill or luck or combination thereof against a given set of rules.

Beyond this, it is important to observe that our appellate court recently held that items 734.20 and 735.20—which cover, among other things, game machines and game equipment—are not "chief use" provisions. *Mego Corp.* v. *United States*, *supra*, C.A.D. 1137, slip op. at 10–11. Instructive in this regard are the following comments in the Tariff Classification Study (Schedule 7, 1960), pp. 287–288:

> The classification problems connected with sports equipment and *games* and *game* equipment which may be chiefly used for the amusement of children are particularly troublesome. * * * The earlier provisions of this subpart discussed above for equipment for various games such as baseball, croquet, and golf, are derived principally from tariff paragraph 1502, and it is intended that the equipment which would be classified thereunder would be of such character and quality *as is ordinarily used* in the serious pursuit of the game or sport named. Such equipment may be diminutive in size for use by children, such as a boy's baseball glove, but it would nevertheless be classified under these provisions so long as it was of a character *suitable for use* in organized play of these games. * * * [Emphasis added.]

Measured by these standards, it must be concluded that the imported article is not a game. For one thing, examination of the article, without more, establishes that by its design and construction it is not directed to a contest or competition. *Cf. Mego Corp.* v. *United States*, *supra*, C.A.D. 1137, slip op. at 9. The record shows that the function of the article is to pitch a ball and to enable the batter to hit the ball so pitched. Thus, there is nothing inherent in the article which restricts its ordinary use to that of a game. Moreover, there are no specific rules for play; rather, the user can make up whatever rules he wants. See e.g., R. 80–81. It is true that an instruction sheet comes with the merchandise. But this instruction sheet merely suggests how one or more persons "can play baseball" therewith. Nor is the merchandise limited in its design and construction to use in a

competition or contest. For it can be, and was in fact, used by individual persons for batting of balls and for batting practice, and the balls can be used separately for most any play activity limited only by the imagination of a child.

Plaintiff, however, argues that an article used in perfecting one's ability to play a game, i.e., batting practice, is game equipment for tariff purposes. I cannot agree. A game machine, or game equipment, must be of such character and quality as is ordinarily used in the pursuit of the game or sport as opposed to preparing or practicing therefor. Hence, if an article is not ordinarily used in a contest, or in competition, it is not a game, notwithstanding that the elements of skill and/or endurance and/or chance might be involved. The short of the matter is that the mere batting of balls, or batting practice, simply does not involve the element of competition. What is more, the fact that a child may compete with himself, in training for a given game, by seeing how many times, or how far, or how high, he can hit a ball does not convert the imported merchandise into a game any more than a top would be converted into a game by virtue of a child competing with himself in seeing how long he can cause the top to spin.

On a related aspect, it is true that the imported article *can* be used for playing a game. But this consideration is scarcely decisive. For innumerable articles can be and are used by children (and adults) for playing games, notwithstanding that by no stretch of the imagination are they considered games. To take an extreme example, pennies are often used by children (and adults) in a game called "pitching pennies" where the winner is the one who pitches his penny closest to the wall. Despite the fact that pennies are used for this purpose, it would strain all credulity to consider them as games.

For the foregoing reasons, it is held that the articles in question are not "games" for tariff purposes and, accordingly, plaintiff's claims for classification under item 735.20 as "game equipment" or under item 734.20 as "game machines" are overruled.

IV

We come now to plaintiff's claims that the imported mechandise is properly classifiable under item 735.20 as sport equipment or under item 734.56 as other baseball equipment. In considering these claims, it is to be noted that headnote 1(iii) of schedule 7, part 5, subpart E does *not* exempt sport equipment or baseball equipment from the per-

vasive character of the toy provisions covered by that subpart. See *Mego Corp.* v. *United States*, *supra*, 67 Cust Ct. at 29. Therefore, in order to be successful in its claims that the importation is sport or baseball equipment, plaintiff must not only overcome the presumption of correctness attendant upon the government's classification of the importation as a toy, it must also establish that the importation falls within the category of sport or baseball equipment. *Ibid.* Plaintiff has failed in both regards.

For one thing, it is clear on the basis of the present record that plaintiff has failed to overcome the presumption that the importation is a toy (i.e., an article chiefly used for amusement purposes). In fact, the record supports the presumption. First, an examination of the merchandise shows that it is a plaything used for amusement purposes and that the fun that children would derive from using the merchandise is essentially the same kind of enjoyment they would derive from any other objects which are commonly thought of as toys. See *United States* v. *Topps Chewing Gum, Inc.*, 58 CCPA 157, 159, C.A.D. 1022, 440 F.2d 1384, 1385 (1971). Second, in their testimony both of plaintiff's witnesses characterized the importation as a "toy." See R. 37, 119, 120, 151. Indeed, plaintiff's witness Abrams, the president of the plaintiff-corporation, readily conceded that the merchandise was an article of "amusement." See R. 123–125. Third, plaintiff advertised and offered the merchandise in its catalogue as an "Action Toy."

Bearing mention on this phase is *New York Merchandise Co., Inc.* v. *United States*, 62 Cust. Ct. 38, C.D. 3671, 294 F. Supp. 971 (1969). There it was held that a "junior edition" of a baseball glove was properly classifiable as baseball equipment because it was of such character and quality as to be suitable for use by children in a regular or organized game of baseball. As the court stated (62 Cust. Ct. at 44): "Those children who cannot afford the more costly baseball gloves can still successfully engage in a game of baseball using the gloves in issue." In short, the only real difference between the "junior edition" involved therein, and the type of baseball gloves used by adults, was the size and the quality of the materials from which it was made.

By contrast, in the present case, the imported merchandise is incapable of use in a game of baseball.[5]

[5] *Baseball* is defined by *Webster's Third New International Dictionary, Unabridged* (1963), as:

> A game played with a ball, bat, and gloves between 2 teams of 9 players each on a large field centering upon 4 bases that form the corners of a square 90 feet on each side, each team having a turn at bat and in the field during each of the 9 innings that constitute a normal game, the winner being the team that scores the most runs.

Thus, as plaintiff's witness Kublan testified, neither the bat nor the balls can be used in a regular game of baseball, and because of weight and size of the ball, a pitcher would be unable to pitch it to the home plate on a regular sized diamond. See R. 74–76, 83. Moreover, the "Iron Mike," which the imported merchandise is patterned after, is not used in the game of baseball, the human pitcher of a nine member team having yet to be replaced by a machine. However, assuming *arguendo* that an "Iron Mike" is baseball equipment for tariff purposes, the legislative history discussed at length in *New York Merchandise*, *supra*, 62 Cust. Ct. at 43–44, reveals the intent of the Congress to have imitations of sports equipment, made for small children, classified as toys and not as sport or baseball equipment. The imported merchandise falls precisely within this category for it is nothing more than a toy imitation of an "Iron Mike."

It may be that the imported merchandise can be used to improve one's skill in the actual game of baseball. But not every object or device that might improve one's skill in a given sport is, *ipso facto*, sport equipment. For example, a broom stick could be used to bat small rubber balls, yet, quite obviously, it is not baseball or sport equipment. By the same token, an ordinary length of rope could be used by a boxer to improve his skills, yet it could hardly be argued that a length of rope is sport equipment.

From what has been said, it is concluded that plaintiff's claims for classification of the imported merchandise as sport equipment under item 735.20 or as baseball equipment under item 734.56 must be overruled.

V

In summary, the court overrules plaintiff's alternative claims for classification of the imported articles (1) as game or sport equipment under item 735.20; (2) as game machines under item 734.20; and (3) as baseball equipment under item 734.56. Judgment will be entered accordingly.[6]

[6] It will be recalled that the government classified the imported merchandise under item 737.90, as other toys, not specially provided for, and assessed duty at the rate of *28 percent* ad valorem. It will also be recalled that the government claims alternatively that the merchandise is classifiable under item 737.80, as toys, not specially provided for, having a spring mechanism, and thus dutiable at the rate of *33 percent* ad valorem. In considering this alternative claim, it must be borne in mind that in a case such as the present where the importer brings suit, this court may not render an affirmative judgment for a rate of duty higher than that assessed. See e.g., *J. E. Barnard & Co., Inc.* v *United States*, 64 Cust. Ct. 525, 527, C.D. 4029 (1970), appeal dismissed, 58 CCPA 165 (1970). Accordingly, the court deems it appropriate in the circumstances of this case to pretermit the question as to whether or not the imported articles are properly dutiable under item 737.80, as toys having a spring mechanism.

(C.D. 4575)

AVDEL CORP. *v.* UNITED STATES

Rivets

RIVETS—COMMON MEANING

A rivet is a fastening device which passes through the articles to be fastened and grips them by means of "heads" or protrusions formed at either end. An article of this type which possesses a central mandrel or pin, the withdrawal of which causes a "head" to form at one end, is a rivet within the common meaning of that term.

Court No. 71-6-00434

Port of New York

[Judgment for plaintiff.]

(Decided December 26, 1974)

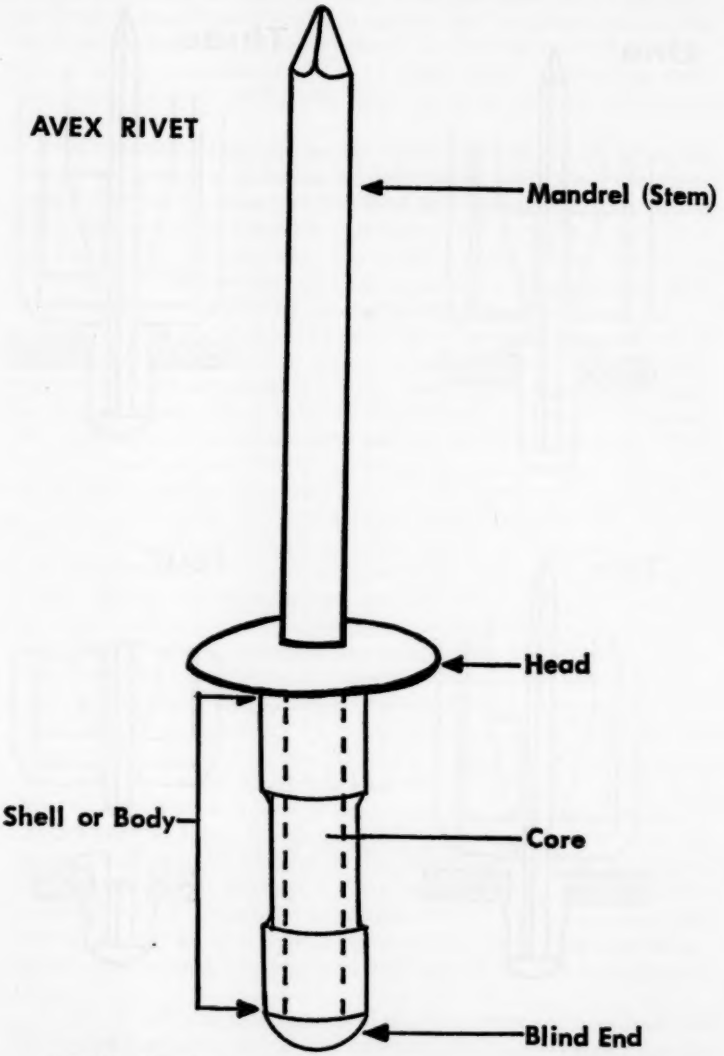
Rode & Qualey (*William E. Melahn* and *John S. Rode* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Gilbert Lee Sandler*, trial attorney), for the defendant.

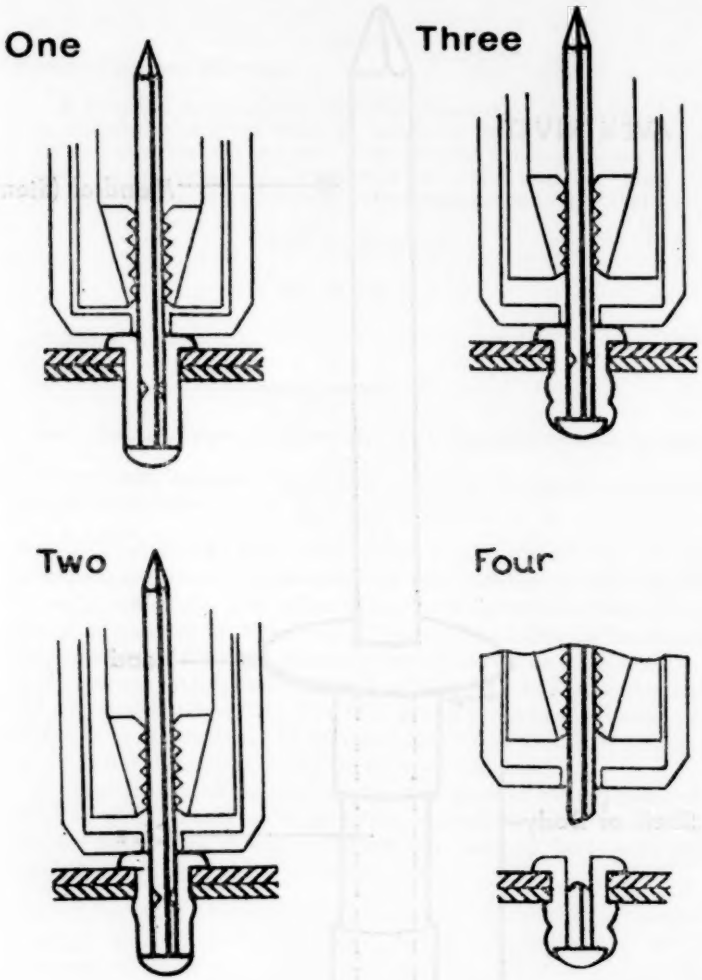
WATSON, Judge: The basic issue in this case is whether the articles in dispute are rivets. The merchandise was classified as other articles of iron or steel under item 657.20 of the Tariff Schedules of the United States, as modified by T.D. 68–9, and assessed with duty at the rate of 13% ad valorem. Plaintiff claims the merchandise is classifiable as iron or steel rivets, not brightened, not lathed, and not machined under item 646.40, as modified by T.D. 68–9, dutiable at the rate of 0.3 cents per pound or as other rivets of base metal under item 646.41, as modified by T.D. 68–9, dutiable at the rate of 9.5% ad valorem.

My examination of the exhibits, my evaluation of the testimony offered by plaintiff and my study of the relevant technical and lexicographic authorities, as well as the relevant case law, lead me to conclude that the importations are indeed rivets.

The article in question is best described by reference to the diagram below (plaintiff's exhibit 2).



The manner in which the article functions is illustrated below (plaintiff's exhibit 4).



In use, the article is inserted through holes in the materials to be joined as far as the head of the rivet permits. A special tool is then used to withdraw the mandrel which, as it withdraws, causes the shell of the rivet to collapse forming a second head or protrusion on the other side of the material being joined. At a certain point the tension of withdrawal causes the mandrel to break off at a preexisting weak spot inside the shell of the rivet. The withdrawn piece of mandrel is then discarded.

I am persuaded that the article I have just described is a rivet within the common meaning of that term, and I am not persuaded that the presence of a mandrel as a part of the rivet or the particular method by which the fastening is accomplished herein, that is to say, by the withdrawal of a mandrel piece, makes this article anything other than a rivet. I find no support for the proposition that a rivet must be a simple tubular, completely hollow article or one devoid of a mandrel. If the rivet contains within itself the means by which force is transmitted to deform it and develop the required protrusion, it is still manifestly a form of rivet. This seems to be precisely the sort of article which falls within the principle that a statutory designation of an article by name without limitations or any indication of contrary legislative intent or limiting judicial opinion includes all forms of the named article. *Nootka Packing Co. et al.* v. *United States*, 22 CCPA 464, T.D. 47464 (1935); *Nomura (America) Corp* v. *United States*, 58 CCPA 82, C.A.D. 1007, 435 F.2d 1319 (1971).

In *Remington Rand, Inc.* v. *United States*, 20 Cust. Ct. 1, C.D. 1075 (1947), Judge Lawrence pointed out that the meaning of the term rivet must be arrived at by a synthesis and distillation of the popular conception of what is commonly known as a rivet. In this endeavor the court considers not only the dictionary definitions but also "the character, nature, form, shape, material of which made, and exclusive use of the imported commodity * * *." In the *Remington Rand* case the characteristic seized on by the defendant in denying classification as a rivet was the absence of a head. Here the characteristic relied on to deny classification as a rivet is the presence of a mandrel portion. In neither case do I feel the characteristics involved detract from the primary and essential identity of the importation as a form of rivet. Just as the court in *Remington Rand* concluded that "rivets may be made with or without a head on one end * * *," I conclude that rivets may be made with or without a mandrel. In short, in its state as imported and as used, the imported article in form and function is a rivet.

A host of dictionary definitions of the term rivet are adequately set out in the *Remington Rand* case and amplified in the case of *Border Brokerage Company et al.* v. *United States*, 58 Cust. Ct. 228, C.D.

2947, 266 F.Supp. 903 (1967). As a result of studying these definitions, I would define a rivet as an article in the nature of a pin or bolt which unites separate pieces of material by passing through them, gripping them by means of heads or protrusions formed at its ends.

The testimony of plaintiff's witnesses, the dictionary definitions, as well as numerous authoritative technical sources such as the *Glossary of Terms for Mechanical Fasteners* published by the American Society of Mechanical Engineers and *Fastener Standards* (5th ed. 1970), establish fully to my satisfaction that the importations are rivets within the common meaning of the term.

Since the testimony clearly establishes that the imported rivets are not brightened, lathed, or machined, and since they are presumptively made of iron or steel (in accordance with their classification), I find they should be properly classified as "Rivets of base metal: Of iron or steel and not brightened, not lathed, and not machined" under item 646.40, as modified by T.D. 68–9, dutiable at the rate of 0.3 cents per pound.

Judgment will enter accordingly.

(C.D. 4576)

BENDIX MOULDINGS, INC. *v.* UNITED STATES

Wood moldings

WOOD MOLDINGS—DEDICATED TO USE AS FRAMES

Lengths of imported wood molding which were dedicated to use in picture or mirror frames but as imported gave no indication of the individual identity or size and shape of any particular frames were not unfinished frames and were properly classified as wood molding.

Court No. 67/45707

Port of New York

[Judgment for defendant.]

(Decided December 27, 1974)

Murray Sklaroff for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Edward S. Rudofsky*, trial attorney), for the defendant.

WATSON, Judge: The merchandise at issue herein consists of wood moldings whose surface has been treated in various ways. The moldings were generally imported in 9-foot lengths and all possessed a rabbet (a recessed groove cut into the rear inner edge of the molding).

The rabbet is designed to hold a picture or mirror within the confines of the frames. After importation these articles are cut and joined to form frames.

The nature and characteristics of the importations as well as the testimony persuade me that they are dedicated for use in the manufacture of picture or mirror frames. Plaintiff claims that the importations *are* picture and mirror frames classifiable by name under item 206.60 and dutiable at the rate of 12% ad valorem. However, the mere fact that the importations are dedicated to such a use is *not* sufficient to constitute them the named articles even in an unfinished state. I am of the opinion the importations are only the material from which frames are made and as such were properly classified as other wood moldings under item 202.66 and correctly assessed with duty at the rate of 17% ad valorem.

The general problem of when a "material" becomes an "article" is one which has long been the subject of judicial consideration. I believe certain useful guidelines emerge from a study of past case law. With respect to importations which are in a form dedicated to a certain use but from which the claimed individual articles have not yet fully emerged, to my mind the underlying question is whether the identity of an actual individual article can somehow be discerned.

In the case of *In Re Mills*, 56 F. 820 (SDNY 1893), Judge Lacombe decided that certain lengths of fabric were improperly classified as partly made wearing apparel and were, in reality, simply manufactures of cotton. In language which is relevant to the instant case, Judge Lacombe stated that "* * * it must at least be made up sufficiently far to enable us to identify the particular article of wearing apparel that is going to be made out of it."

The latter case of *United States* v. *Buss & Co.*, 5 Ct. Cust. Appls. 110, T.D. 34138 (1914), elaborated on this rule as follows (p. 113):

> * * * [M]ost small articles are not produced as individual or separate products of the loom, but for economy of manufacture are first woven "in the piece." The rule of decision is therefore established that where such articles are imported in the piece and nothing remains to be done except to cut them apart they shall be treated for dutiable purposes as if already cut apart and assessed according to their individual character or identity. This follows, however, *only in case the character or identity of the individual articles is fixed with certainty* and in case the woven piece in its entirety is not commercially capable of any other use. [Emphasis supplied.]

In the case of *United States* v. *The Harding Co.*, 21 CCPA 307, T.D. 46830 (1933), long rolls of brake lining material were denied classification as unfinished parts of automobiles. Although the court con-

sidered the imported brake lining material to be "commercially capable" of uses other than in automobile brakes, its underlying reasoning was based more on the consideration that the importation was an undifferentiated material. The court stated that "* * * it is not marked to indicate where it is to be cut, for the obvious reason that, even when used as brake linings for automobiles, it must be used in various lengths; accordingly, the identity of the individual articles is not fixed with certainty." (P. 310.)

In the later case of *The Harding Co. et al.* v. *United States*, 23 CCPA 250, T.D. 48109 (1936), in which it was definitely established that the lengths of brake lining material were dedicated for use in automobiles, the court made it unmistakably clear that so long as the identity of the individual articles could not be fixed with certainty the imported brake lining remained a material and could not be regarded as part of an automobile.

It need hardly be emphasized that there are no individual frames, finished or unfinished, whose identity is fixed with certainty at the time of importation of the wood moldings involved herein. Although these wood moldings are dedicated to the making of frames in the abstract, there are no discernable particular frames being imported.

In the case of *American Import Co.* v. *United States*, 26 CCPA 72, T.D. 49612 (1938), 60-foot lengths of silk fishing leader gut were held to be manufactures of silk rather than unfinished leaders. Although little remained to make the importations into leaders, the court found they were still simply material. Although this later opinion did not completely articulate its underlying rationale, its conclusion is consistent with the absence of discernable individual articles. It further suggests that no matter how close the importation is to the finished article or how dedicated it is to a single use, it remains a material until the identity of actual articles can be seen emerging with certainty from the undifferentiated material.

In the recent case of *Sandvik Steel, Inc.* v. *United States*, 66 Cust. Ct. 12, C.D. 4161 (1971), long coils of steel blade which, after importation, were cut and bent to provide the cutting edge for dies used in cutting machines were held to be articles of iron or steel rather than unfinished cutting blades for power or hand machines. Most importantly, the court noted that at the time of importation the shape and size of the finished dies made from the articles in question were entirely indeterminate. As here, the production of identifiably distinct individual articles with a known size took place after importation. It seems clear that when the shape and size of an imported article cannot be determined at the time of importation no actual article can be discerned and therefore no article exists.

Another case in which the necessity of distinguishing individual articles from an undifferentiated material arose was *Nyman & Schultz* v. *United States*, 14 Ct. Cust. Appls. 432, T.D. 42060 (1927). In that case, rolls of long thin strips of steel were held to have been properly classified as unfinished blades for safety razors. The court was particularly impressed by the presence in the center of the strips of perforations corresponding exactly to those which characterized the final individual blades and which therefore made them individually discernible. As regards the present importation, there is nothing about the lengths of wood molding which fixes with certainty the identity of the individual article which is claimed to exist.

All in all, I find no support for the proposition that the imported wood moldings are entitled to classification as if they were unfinished frames. The extent and completeness of their dedication to use as frames is to no avail since in their imported condition they are not dedicated to the making of *any particular frame*.

The case of *J. E. Bernard & Co., Inc.* v. *United States*, 50 Cust. Ct. 41, C.D. 2386 (1963), in which 100-foot-long coils of steel bandsaws were held to be classified as steel bandsaws, is not inconsistent with the conclusion I reach here to the extent there was evidence that the importations were usable as bandsaws in their imported lengths. However, I must conclude in general that the decision in *J. E. Bernard* owes more to the special considerations regarding the article in question and the legislative history of the provision involved than to the main body of precedent on the subject of materials versus articles.

Finally, the merchandise involved herein is less like a frame than the packages of two sides of frames which I denied classification as frames in *Standard Brands Paint Co., Inc.* v. *United States*, 71 Cust. Ct. 75, C.D. 4477 (1973) (Customs Appeal 74–20 pending). There, the existence of unlimited possible combinations between the imported packages belied the importation and existence of any single identifiable and predictable frame. Here the unpredictability is even greater since the importations are not limited to use in four sided frames and are in a less differentiated form.

In conclusion I note that the provision for wood moldings pursuant to which the importations were classified is distinctly appropriate for the classification of surface treated wood moldings dedicated for use as frames. They concededly fall within the meaning of the term "wood moldings" and are in fact and law wood moldings. Since their surface is treated they are properly classifiable as "other" wood moldings pursuant to item 202.66. Although this result is obtainable without the necessity of consulting legislative history, it is nevertheless confirmed by the Tariff Classification Study, Explanatory Notes, Sched-

ule 2, part 1, page 23, which indicates explicitly that item 202.66 covers picture frame moldings.

The impact of this particular piece of legislative history has been lessened by Judge Re's incisive conclusion in *Border Brokerage Company, Inc.* v. *United States*, 63 Cust. Ct. 243, C.D. 3903 (1969), that *untreated* picture frame moldings come within the plain language and scope of item 202.63 for standard untreated moldings. Nevertheless, as regards *treated* picture frame moldings, the language of item 202.66 and the legislative history are in harmony as, for that matter, are the results in the *Border Brokerage* case, *supra*, and the results herein. Untreated picture frame moldings are classifiable in item 202.62 or item 202.64 while treated picture frame moldings are classifiable in item 202.66.

Judgment will enter accordingly.

(C.D. 4577)

UNIVERSAL ACCORDION FACTORY *v.* UNITED STATES

Musical instruments and parts

ELECTRONIC MUSICAL INSTRUMENTS—CAPACITY TO PRODUCE ELECTRONIC SOUND—PIANO ACCORDIONS

Accordion and foot pedal units imported at Los Angeles from Italy in 1968 and 1969 were classified in liquidation under TSUS item 725.47 as electronic musical instruments, and it is claimed by the importer that the imported articles should be classified as piano accordions under TSUS item 725.14.

The evidence establishes that the accordion unit which has an integral organ keyboard section may be played as a conventional accordion without utilization of the foot pedal unit, which contains an electrical power source; and also, when connected by means of cables up to the foot pedal unit *and* an amplifier which houses a speaker system, the accordion unit may be played as an electric accordion or as an electronic organ or in combination.

HELD, although the definition of the term "electronic musical instruments" embraces an accordion unit capable of producing only a partial electronic sound when connected up with other components, no such classification can be made where, as in this case, the accordion and foot pedal units were incapable of producing the partial electronic sound in the absence of an amplifier with speaker system which was not imported. *Montgomery Ward & Co., Inc.* v. *United States*, 61 CCPA 101, C.A.D. 1131, decided June 27, 1974 [Cust. Bull. Vol. 8, No. 29, page 30] followed. In such a case classification of the articles as piano accordions is correct.

Court Nos. 70/31131, etc.

Port of Los Angeles

[Judgment for plaintiff.]

(Decided December 30, 1974)

Glad, Tuttle & White (*Robert Glenn White* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Frank J. Desiderio*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise in these cases, consolidated for trial, is described on the commercial invoices either as electronic accordions or as accordions. The merchandise was exported from Italy in 1968 and 1969 and classified in liquidation upon entry at the port of Los Angeles, California under TSUS item 725.47 as amended by Public Law 89–241 as other electronic musical instruments at the duty rate of 17 *per centum ad valorem*. And it is claimed by the plaintiff-importer that the mechandise should be classified under TSUS item 725.14 as modified by T.D. 68–9 as piano accordions at the duty rates of 12.5 or 11 *per centum ad valorem*, depending upon date of entry.

The competing tariff provisions read:

[classified]		
	Electronic musical instruments:	
	* * * * * * *	
725.47	Other	17% ad val.
[claimed]		
	Wind musical instruments:	
	* * * * * * *	
	Accordions and concertinas:	
725.14	Piano accordions	12.5–11% ad val.

Additionally, the term "Electronic musical instruments" as used in the superior heading to item 725.47 is defined as embracing "all musical instruments in which the sound is generated electrically, and *conventional-type instruments not suitable for playing without electrical amplification, but the term does not include conventional-type instruments, fitted with electrical pick-up and amplifying* devices, when the instrument is suitable for playing without such amplification." [Emphasis added.] See Headnote 2(c), Schedule 7, TSUS, Part 3, Subpart A.

The record in the case consists of the testimony of two witnesses, and documents illustrating models of the merchandise in issue, designated

as MAGICVOX and ELECTROVOX, respectively (plaintiff's exhibits 1 and 2). Two articles were imported, namely, an accordion unit and a foot pedal unit. Silvio Nardoni, president of the plaintiff-importing company testified that the accordion unit could be played without the use of the foot pedal or electricity; and he demonstrated by playing one of the imported accordion units in open court without the use of the foot pedal or electrical hookup. The witness stated the article is a piano accordion and called attention to its 42 treble keys and 120 bass buttons. When the accordion unit is played in the manner demonstrated by the witness the foot pedal unit is not used or connected up to the accordion unit at all.

Mr. Nardoni stated that the accordion unit contained electronic components (tone generators) whose function it is to produce organ-like effects when the accordion unit is played with the use of electricity supplied through the foot pedal unit which connects the electrical power source with the amplifier and the accordion unit together by means of cable connections. The witness testified that the imported articles are commonly used both as an accordion and as an organ at the same time. He stated that the accordion and foot pedal units are imported and sold together, and that an amplifier may or may not be sold along with the other units depending upon whether or not the purchaser already owns an amplifier at the time of purchase. When purchased as a complete system, i.e., accordion, foot pedal, amplifier, the system retails for around $2,200 as compared to the retail price of around $1,800 for a conventional-type accordion, according to the witness.

Mr. Nardoni also testified that the accordion unit was able to produce 6 tonal effects without electrical amplification, and that through activation of the tone generators it was capable of producing an additional 27 tonal effects when connected up with the foot pedal unit and an amplifier. According to the witness the foot pedal functions both as a transformer and as a volume regulator for the organ sounds. However, without the foot pedal and amplifier no sound can be produced from the electronic side of the accordion unit.

Lawrence Larson, a music store owner and professional musician, testified that he has played the accordion unit in issue, and that although he has never sold one he has sold the CORDOVOX, a similar instrument. With respect to the operation of the unit at bar, Mr. Larson testified (R. 47–48):

> Q. You played the accordion part of that instrument. Now, what effect would result if you were to plug that into an amplifier and just use the foot pedal and not use the organ part of it?—A. When you played your basses— Like if you went like this (demonstrating), you would get the sound of a base [sic], if you

know the sound of a bass fiddle or electric bass. Instead of this sound, you would get a very deep bass sound, identical to a bass.

Q. Would it be much louder?—A. Much louder.

Q. If it were sent through an amplifier?—A. Right.

Q. Must you pump the accordion to produce the sound?—A. No.

Although both pieces of literature covering the imported articles call attention to the electrical capabilities of the accordion units in issue, exhibit 1, prepared by the manufacturer, treats the accordion unit as two distinct instruments, namely, accordion and electronic organ. But exhibit 2, prepared by the plaintiff-importer, treats the accordion unit as a single instrument, referring to it as "instruments-in-combination."

Plaintiff argues that the imported articles cannot be classified under item 725.47 because they were incapable of producing sound electronically as they were incomplete (at the time of importation) as electronic musical instruments, citing *Montgomery Ward & Co., Inc.* v. *United States*, 61 CCPA 101, C.A.D. 1131, decided June 27, 1974 [Cust. Bull. Vol. 8, No. 29, page 30].

Additionally, plaintiff argues that the imported accordion units lack a marked electronic construction which would make them exclusively an electronic instrument, and, therefore, cannot be removed from classification under the *eo nomine* provision for piano accordions in item 725.14, citing *Marubeni-Iida (America), Inc.* v. *United States*, 64 Cust. Ct. 452, C.D. 4019 (1970), and *Montgomery Ward & Co., Inc.* v. *United States, supra.*

Defendant contends that although the accordion units in issue can be played without electronic amplification they were designed to be operated through an electronic system and, as such, were properly classified under item 725.47, citing *Marubeni-Iida (America), Inc.* v. *United States, supra.*

In C.A.D. 1131 the merchandise consisted of various components utilized in the manufacture of electronic organs which upon importation into the United States were classified as electronic musical instruments, other, under item 725.47, and claimed to be classifiable under item 726.80 as musical instrument parts not specially provided for. Parts supplied in the United States consisted of cabinets and loudspeakers. The Court of Customs and Patent Appeals held that the omission of the cabinets and loudspeakers (which are "basic elements of an organ") from the importations precluded classification of the imported components under item 725.47, and sustained the claim for classification of the merchandise under the parts provision in item 726.80. With respect to the loudspeakers, the court said (p. 37):

> . . . The assumption is that the imported electronic components generate "sound" and that the speaker merely makes it

> audible. The imported components do not generate sound, as the evidence shows and as is well known; they generate electrical currents only. The speaker, which can also be characterized as an electrical device, since it is actuated by the electrical currents fed to it, acts as a transducer to convert electrical energy into sound. Until this occurs, there is no sound. We therefore have to disagree with the lower court's conclusion that the courtroom demonstration "effecitvely [sic] dramatized" how the imported components, when assembled, "generated sound electrically." They generated nothing more than electrical currents and there was no sound but for the added loudspeaker, which was not among the imported articles. We deem it essential to its classification as a "musical instrument"—in the absence of some indication of legislative intent to the contrary—that there be a capability in an organ of producing sound when played upon.

Our appeals court in C.A.D. 1131 also concluded that the cabinetry was an essential part of the organ (functioning as a baffle for the speakers, among other things).

In C.D. 4019 the merchandise was electric guitars (both hollow and solid body types) which were classified under item 725.06 as other stringed [musical] instruments and claimed to be classifiable under item 725.45 as electronic musical instruments. In sustaining the importer's claim under item 725.45 the court found that sound in the guitars was produced electronically by the vibration of steel strings, which vibration was picked up by so-called "pickups" and circulated through the electronic system which consisted of a separate amplifying system. The court noted that the imported guitars were different from acoustical guitars in use, construction, tone and sound characteristics. The court concluded that although the guitars could be played without amplification, such usage was suitable only for practice purposes, as the guitars were designed to be operated through the electronic system, and were not meant to be played without amplification.

In the instant case, apart from the matter of instrument usage, the evidence conclusively establishes that some portion of the sound emanating from the imported accordion units in combination with other components can only be produced electronically, namely, the organ sounds. The record shows that this electronic sound is produced through activation of the tone generators housed in the accordion unit when that unit is connected up with the foot pedal unit and an amplifier, with the foot pedal cable plugged into a suitable source of electrical power. In the opinion of the court the operation of the accordion units in this fashion comes within the language of Headnote 2(c) of Schedule 7, TSUS, Part 3, Subpart A, inasmuch as "the sound is generated electrically."

In the opinion of the court the emphasis in the statute is on the method by which sound is produced rather than on the *quantum* of

sound produced by a particular method. And there is no suggestion in the instant case that the organ section of the accordion unit is not an integral part of the instrument in terms of design and usage. Certainly, in the case of an accordion, any sound not derived from activation of reeds by means of a bellows can hardly be deemed the product of a piano accordion. Indeed, it is to be noted that the manufacturer in its instructional literature (exhibit 1) describes the accordion unit as an "electronic accomplishment" with full awareness of its limitations. So too, this court deems the imported accordion units when assembled with other units (which were not imported with it) to be electronic musical instruments as that term is used in item 725.47.

The question of whether the imported articles were capable of being played as an electronic musical instrument in the condition in which they were imported does not appear to have been considered in C.D. 4019 although it was established in the record there that the imported electric guitars were sold separately from the amplifying system which formed part of the electronic system, and that the guitars themselves were not capable of producing sound. However, this question was at the core of the recent decision of our appeals court in C.A.D. 1131 when that court took the position that a capacity to produce the electronic sound at the time of importation is the *sine qua non* for classification of a musical instrument under item 725.47.

In the instant case the trial demonstration was confined to an illustration of the conventional accordion, owing to the fact that the foot pedal unit which had been imported with the accordion unit was not in court. However, the demonstration without the use of the foot pedal serves to underscore testimony in the record which establishes the fact that without the foot pedal and an amplifier the accordion unit is incapable of producing electronic sound. Thus, from the standpoint of electronic sound the instant importations are on the same footing as were the organ parts in C.A.D. 1131, i.e., they are incomplete components in the production of electronic sound.

In C.A.D. 1131 the court ruled that in the electronic musical system there involved sound was generated by the loudspeakers. In the instant case it would appear from the evidence that the electronic sound is also generated by the speaker system. In this connection the witness Nardoni testified on cross-examination (R. 27–28):

> Q. Well, I direct your attention to Plaintiff's Exhibit 2. I believe on the lower right-hand side there is a Universal Amplifier illustrated, is that right?—A. Yes.
>
> Q. Do you normally sell that amplifier with the accordion?—A. Yes. If the user or buyer has an amplifier, he doesn't need another amplifier. This is an amplifier that we had made here in this country and that we market, but we think it compliments [sic] the particular instrument here.

Exhibit 2 contains the following statements, among others, concerning the Universal amplifier mentioned in Mr. Nardoni's testimony:

> Designed to maximize the full frequency range and versatility of the ELECTROVOX accordion-combo. Two large, quality speakers produce rich, full tones with immediate and dependable response. . . .

Hence, the speaker system by means of which the electronic organ sound is produced is housed in the amplifier which, of course, is external to the accordion unit. In this posture, it is clear, therefore, that in the condition in which imported the involved accordion units were incapable of producing electronic sound even with the accompanying foot pedal units. And since no amplifiers with speaker systems were imported with the accordion and foot pedal units, it follows that the imported articles could not properly be classified as electronic musical instruments under item 725.47 under the reasoning expressed in C.A.D. 1131.

There is no question but that the evidence supports classification of the imported articles as piano accordions. In appearance and performance the accordion units resemble the ordinary, conventional piano accordion that one is accustomed to see and hear. And this image is not changed by the presence of the foot pedal unit whose function, insofar as the accordion is concerned, is to assist in enabling the accordionist, as an option, to amplify the reed-produced accordion sounds, termed electric accordion. This additional function, made possible by built-in electronic circuitry in the accordion unit, is compatible with the *eo nomine* provision for piano accordions in item 725.14 inasmuch as the foot pedal unit is designed and intended to be fitted into the accordion unit by way of its connecting cable. See Headnote 3 of Schedule 7, TSUS, Part 3, Subpart A.

For the reasons stated, the court agrees with the plaintiff that the subject merchandise should have been classified under item 725.14. Plaintiff's claim is, therefore, sustained.

Judgment will be entered herein accordingly.

(A.R.D. 321)

UNITED STATES *v.* GEIGY CHEMICAL CORPORATION
SANDOZ, INC.
CIBA CHEMICAL & DYE CO.

Chemicals

UNITED STATES VALUE—USUAL PROFIT AND GENERAL EXPENSES

The trial court properly predicated the deduction for the usual profit and general expenses under section 402(c)(1) of the Tariff Act of 1930, as amended (19 U.S.C. § 1401a(c)(1)), on the experience of the importer who had the largest share of the market, rather than on the experience of an importer who had the smallest share of the market.

TRANSACTIONS BETWEEN RELATED PERSONS—SECTION 402(g)

The appraiser misapplied section 402(g) of the Tariff Act of 1930, as amended (19 U.S.C. § 1401a(g)), in disregarding the profits and general expenses of the importers, where his action was predicated solely upon the importers' relationship to their Swiss suppliers.

TRANSACTIONS BETWEEN RELATED PERSONS—USUAL PROFIT AND GENERAL EXPENSES

Section 402(g) of the Tariff Act of 1930, as amended (19 U.S.C. § 1401a(g)), does not authorize the appraiser to disregard transactions involving related persons unless, *in addition* to the existence of a relationship, the amount representing an element of value does not reflect the usual market experience. Thus, Congress did not intend that the *usual* profit and general expenses deductible from the United States selling price pursuant to section 402(c)(1) (19 U.S.C. § 1401a(c)(1)) be disregarded because a transaction was between related persons.

TRANSACTIONS BETWEEN RELATED PERSONS—TRANSACTIONS DISREGARDED NOT LIMITED TO THOSE "IN THE MARKET UNDER CONSIDERATION"

It is a fundamental fact that rigged prices in the export market may materially affect the importer's profits and general expenses

in the United States market. Hence, when United States value is the basis for appraisement, section 402(g) of the Tariff Act of 1930, as amended (19 U.S.C. § 1401a(g)), authorizes appraising officers to scrutinize export transactions between importers and their related supplier companies, and to disregard the importer's profit and general expenses as the proper allowances under section 402 (c)(1) (19 U.S.C. § 1401a(c)(1)), where the amounts thereof do not fairly reflect the usual amounts of those elements in sales in the United States. Therefore, the "transactions" which may be disregarded under section 402(g) are not limited to those "in the market under consideration", as held by the trial court.

SAME

Although the "market under consideration" in section 402(g)(1) of the Tariff Act of 1930, as amended (19 U.S.C. § 1401a (g)(1)), is the United States market when considering United States value (see *Brown, Alcantar & Brown, Inc., et al.* v. *United States*, 69 Cust. Ct. 249, A.R.D. 306, 348 F. Supp. 723 (1972)), such phrase refers to the immediately antecedent term in the statute, "sales", and not to the more remotely antecedent term, "transaction". Consequently, respecting section 402(c)(1), the phrase "in the market under consideration" directed the appraiser's attention to profit and general expenses realized in *sales* in the United States market; but the phrase did not limit the *transactions* that could be disregarded to merely those in the United States market.

SAME

Where United States value is the basis for appraisement section 402(g) of the Tariff Act of 1930, as amended (19 U.S.C. § 1401a (g)), embraces transactions between related persons in the United States market, *and additionally* includes transactions between related exporters and importers. The latter transactions may be disregarded (under appropriate circumstances) even though the elements of value to be considered, profit and general expenses, are realized in sales in the United States market.

SAME

Irrespective of section 402(g) of the Tariff Act of 1930, as amended (19 U.S.C. § 1401a(g)), appraising officers have *inherent authority*, indeed a *duty*, to consider the circumstances in *all* transactions between related persons and to disregard *any* transaction which is not a valid basis for determination of dutiable value.

SAME

While the appraiser had plenary authority to disregard export transactions between the importers and their Swiss suppliers, if he found the export prices were rigged, manipulated, or contrived to affect the United States value of the merchandise, the record fails to show that he in fact disregarded any such export transactions.

APPLICATION FOR REVIEW OF REAPPRAISEMENT DECISION 11775

Reappraisement Nos. R66/10120-S, R65/16280 and R65/20992

Entered at New York, N.Y.
Entry Nos. 863926, 1082619 and 1097215.

Second Division, Appellate Term

[Affirmed.]

(Decided September 4, 1974)

Carla A. Hills, Assistant Attorney General (*Bernard J. Babb*, trial attorney), for the appellant.

Busby Rivkin Sherman Levy and Rehm (*Saul L. Sherman* of counsel) for appellee Geigy Chemical Corporation.

Barnes, Richardson & Colburn (*James S. O'Kelly, Hadley S. King* and *James H. Lundquist* of counsel) for appellee Sandoz, Inc.

George Bronz for appellee Ciba Chemical & Dye Co.

Before FORD and NEWMAN, Judges;
RAO, J., not participating

NEWMAN, Judge: Appellant (defendant below) has filed an application for review of the decision and judgment of Watson, J. in *Geigy Chemical Corporation et al* v. *United States*, 70 Cust. Ct. 259, R.D. 11775, 358 F. Supp. 1275 (1973), wherein Judge Watson conducted a joint trial of three appeals for reappraisement, and sustained appellees' (plaintiffs below) claimed values.

The imported merchandise, consisting of certain benzenoid dyestuffs, was exported from Switzerland by J. R. Geigy, S.A., Sandoz, Ltd., and Ciba, Ltd. during 1965, and imported by each of their wholly-owned subsidiaries, appellees herein. The parties agree that the proper basis for appraisement is United States value, as defined in section 402(c) of the Tariff Act of 1930, as amended by the Customs Simplification Act of 1956 (19 U.S.C. § 1401a(c)). The only elements of the appraised value in dispute are the statutory allowances for profit and general expenses pursuant to section 402(c)(1).[1] At the trial, appellees successfully claimed that the proper allowance for profit and general expenses should be 33.4% rather than 19.1%, which latter figure entered into the Government's appraisement.

We affirm.

THE RECORD

An extensive stipulation of the parties is fully set forth in the opinion of the trial court (70 Cust. Ct. at pages 261–266) to which

[1] Section 402(c)(1) provides:

"(c) UNITED STATES VALUE.—For the purposes of this section, the United States value of imported merchandise shall be the price at the time of exportation to the United States of the merchandise undergoing appraisement, at which such or similar merchandise is freely sold or, in the absence of sales, offered for sale in the principal market of the United States for domestic consumption, packed ready for delivery, in the usual wholesale quantities and in the ordinary course of trade, with allowances made for—

(1) any commission usually paid or agreed to be paid, or the addition for profit and general expenses usually made, in connection with sales in such market of imported merchandise of the same class or kind as the merchandise undergoing appraisement;"

reference will be made herein. It suffices to state at this juncture that we are in complete accord with the trial court's analysis of the facts.

Decision of The Trial Court

Judge Watson held that the appraiser erroneously applied section 402(g)[2] in disregarding the profit and general expenses of appellees, the three largest importers of the merchandise under consideration, and in regarding the profit and general expenses of the smallest importer (Carbic) as those "usually made, in connection with sales * * * of imported merchandise of the same class or kind as the merchandise undergoing appraisement."

The trial judge noted that in 1964 appellees and Carbic possessed 100% of the United States market; and that appellees possessed the "lion's share" of the market (92.4%), with Geigy having the highest percentage of dollar volume of sales (37.8%), as evidenced by paragraph 9 of the stipulation, showing the following figures:

Importer	Percentage of dollar sales
Geigy	37.8%
Sandoz	31.4%
Ciba	23.2%
Carbic	7.6%

With reference to the foregoing figures, Judge Watson aptly commented (70 Cust. Ct. at page 269):

> * * * In light of this division of the market, it would defy common sense to consider the experience of Carbic as that which is "usual" for the market in question. Nor will I discredit the experience of the firms with the larger shares of the market in the absence of specific discrediting evidence.

Further, Judge Watson held that there was no presumption that the experience of Geigy was tainted by any improper manipulations

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[2] Section 402(g) provides:

"(1) For the purposes of subsection (c)(1) or (d), as the case may be, a transaction directly or indirectly between persons specified in any one of the subdivisions in paragraph (2) of this subsection may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales in the market under consideration of merchandise of the same general class or kind as the merchandise undergoing appraisement. If a transaction is disregarded under the preceding sentence and there are no other transactions available for consideration, then, for the purposes of subsection (d), the determination of the amount required to be considered shall be based on the best evidence available as to what the amount would have been if the transaction had occurred between persons not specified in any one of the subdivisions in paragraph (2).

"(2) The persons referred to in paragraph (1) are:

* * * * * * *

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting stock or shares of any organization and such organization; * * *"

and contrivance between it and its parent company, and he noted that appellant had adduced no proof of any untoward circumstances in the sales between the importers and their parent company suppliers. On the other hand, uncontradicted affidavits submitted by appellees from the parent company suppliers, showed that the profits of appellees' suppliers exceeded the profit of the supplier of Carbic, the company whose general expenses and profit in the United States were adopted by the appraiser.

Thus, the following table shows the percentages of profit of Sandoz, Ltd.; Ciba, Ltd.; and J. R. Geigy, S.A., suppliers to the three appellees, as against the profits of Durand & Huguenin, S.A., supplier to Carbic:

Sandoz, Ltd.	37.6%
Ciba, Ltd.	25.7%
J. R. Geigy, S.A.	23.4%
Durand & Huguenin, S.A.	12.3%

As a basis for selecting Geigy's gross profit of 33.4% as the proper statutory allowance for profit and general expenses,[3] the trial judge held that what is usual in a market for purposes of section 402(c) is the experience of the largest segment of the market, or in that portion of the market which sells the greatest quantity of the merchandise in question. (Citing *United States* v. *International Expediters, Inc., for Winsor & Newton, Inc.*, 40 CCPA 148, C.A.D. 511 (1953); and *United States* v. *C. J. Tower & Sons of Buffalo, Inc.*, 60 CCPA 46, C.A.D. 1079, 470 F. 2d 1393 (1972). Hence, since Geigy possessed a larger share of the market than any other firm (see table *supra* at page 6), the general expenses and profit of Geigy represented the amounts of those elements which were "usual" in the market under consideration for purposes of computing the proper allowances under section 402(c)(1).

Contentions of the Parties

Appellant contends that the proper allowance for general expenses and profit under section 402(c)(1) should be based upon the general expenses and profit of Carbic, a firm not related to its exporter. Consequently, urges appellant, the trial judge committed reversible error in predicating the statutory allowances upon the general expenses and profit of appellee Geigy, who was related to its exporter.

Appellant further argues that section 402(g) is applicable, notwithstanding that the relationship under section 402(g)(2) was be-

[3] According to paragraph 8 of the stipulation, "gross profit" is the sum of net profit and general expenses. In 1964, Sandoz' gross profit was 29.9%, and Ciba's gross profit was 26.6%.

tween appellees and their parent companies in Switzerland. Hence, appellant insists that the appraiser properly disregarded the general expenses and profits of the appellees reflected in their sales in the United States, and adopted the general expenses and profit of Carbic as the proper allowances under section 402(c)(1).

Appellees contend that Geigy's profit and general expenses (33.4%), not Carbic's (19.1%), were "usual", and therefore should have been allowed by the appraiser; and that the appraiser erred in disregarding the experience of appellees solely because they were related to their Swiss suppliers.

OPINION

After considering the parties' arguments, we have no hesitancy in reaching the determination that we are in accord with the opinion of the trial judge, excepting certain observations with respect to section 402(g), upon which we wish to comment.

The trial court held that section 402(g) was inapplicable in this case because: (1) the transactions in the United States between appellees and their customers were between unrelated companies, and thus not between persons specified in any of the subdivisions of section 402(g)(2); (2) the transactions between appellees and their parent companies were not transactions "in the market under consideration", since such market in the instance of United States value is the United States domestic market; and (3) even if there were a relationship between appellees and their purchasers in the United States, such relationship alone would not be sufficient to disregard transactions between them pursuant to section 402(g) in the absence of a further finding that the general expenses and profit realized in sales by appellees in the United States did not fairly reflect the amount usually reflected in sales of merchandise of the same class or kind as the involved merchandise.

We have concluded that the trial court correctly held that the appraiser misapplied section 402(g) in disregarding the profits and general expenses of appellees since his action was predicated solely upon appellees' relationship to their Swiss suppliers.[4] Clearly, section

[4] The parties stipulated as follows:

"11. In making the allowance for profit and general expenses specified in paragraph 4(b) above, the Appraiser, because the relationship between Geigy, Sandoz and Ciba, and their respective parent companies was such as is described in Section 402(g)(1), found that their profits and general expenses did not "fairly reflect the amount usually reflected in sales in the market under consideration of merchandise of the same general class or kind as the merchandise undergoing appraisement," disregarded their profits and general expenses for purposes of determining the proper allowances to be made under Section 402(c)(1), and based his allowance on the profits and general expenses of Carbic. Having found for the aforesaid reasons that the profits and general expenses of Geigy, Sandoz, and Ciba did not fairly reflect the amount usually reflected in the market under consideration of merchandise of the same class or kind as the merchandise undergoing appraisement, the Appraiser did not determine the accuracy of the submissions by Geigy, Sandoz, and Ciba with regard to general expenses and profit".

402(g) does not authorize disregarding of transactions involving related persons unless, *in addition* to the existence of a relationship, the amount representing an element of value does not reflect the usual market experience. Put otherwise, Congress did not intend in section 402(g) that the *usual* profit and general expenses be rejected because a transaction was between related persons. Yet, this would be the result in this case if appellant's position were upheld.

However, we are unable to agree with the trial court's holding that where the basis of appraisement is United States value a transaction must be "in the market under consideration" (viz., United States market) to be disregarded under section 402(g). In substance, the trial court held that the relationship of appellees to their parent company suppliers was of no significance; and that since appellees were unrelated to their purchasers in the United States, section 402(g) was inapplicable. We believe this construction of the statute is too narrow, and entirely disregards the fundamental fact that rigged prices in the export market may materially affect the importer's profits and general expenses in the United States market. See *National Carloading Corporation* v. *United States*, 65 Cust. Ct. 830, 834, A.R.D. 280, 319 F. Supp. 1291 (1970), *aff'd on other grounds*, 60 CCPA 54, C.A.D. 1080, 469 F. 2d 1398 (1972); *Judson Sheldon International Corporation* v. *United States*, 54 Cust. Ct. 773, 780, A.R.D. 183 (1965).

Thus, when United States value is the basis for appraisement, as here, we are of the view that section 402(g) authorizes appraising officers to scrutinize export transactions between importers and their related supplier companies, and to disregard an importer's profit and general expenses as the proper allowances under section 402(c)(1) where the amounts thereof do not fairly reflect the usual amounts of those elements in sales in the United States.[5] Otherwise, "a foreign manufacturer or seller who is related to the importer [could obtain] a low appraisement by making all or most of his profit on the imported goods in the United States rather than a normal profit in export sales". *National Carloading Corporation*, 65 Cust. Ct. at page 835.

Although we agree with the trial court that the "market under consideration" in section 402(g)(1) is the United States market when considering the United States value (see *Brown, Alcantar & Brown, Inc., et al.* v. *United States*, 69 Cust. Ct. 249, A.R.D. 306, 348 F. Supp. 723 (1972), such phrase refers to the immediately antecedent term in the statute, "sales", and not to the more remotely antecedent term, "transaction". Therefore, concerning section 402(c)(1), the phrase

[5] Moreover, irrespective of section 402(g) we believe that appraising officers have *inherent authority*, indeed a *duty*, to consider the circumstances in *all* transactions between related persons and to disregard *any* transaction which is not a valid basis for determination of dutiable value.

"in the market under consideration" directed the appraiser's attention to profits and general expenses realized in *sales* in the United States market; but clearly the phrase did not limit the *transactions* that could be disregarded to merely those in the United States market. Accordingly, where United States value is the basis for appraisement, section 402(g) embraces transactions between related persons in the United States market, *and additionally* includes transactions between related exporters and importers. The latter transactions may be disregarded (under appropriate circumstances) even though the elements of value to be considered, viz., profit and general expenses, are realized in sales in the United States market.

While we conclude that the appraiser had plenary authority to disregard export transactions between appellees and their Swiss suppliers, if he found that the export prices were rigged, manipulated, or contrived to affect the United States value of the merchandise, the record fails to show the appraiser, in fact, disregarded any such export transactions. Rather, paragraph 11 of the stipulation indicates that nothing more than the relationship of the importers to their Swiss suppliers was considered by the appraiser in rejecting appellees' profits and general expenses. As noted above, under section 402(g) relationship alone did not warrant the appraiser's rejection of appellees' profits and general expenses.

We agree that the presumption of correctness attaching to the appraised values has been decisively overcome by the record. Further, we find that the trial court properly predicated the statutory deduction for the usual profit and general expenses under section 402(c)(1) on the experience of appellee Geigy, who had the largest share of the market, rather than on the experience of Carbic, who had the smallest share of the market.

In conclusion, we find no reversible error in the decision and judgment of the trial judge, and affirm. The numbered findings of fact and conclusions of law in the opinion of the trial judge are hereby adopted as our own.

Judgment will be entered accordingly.

The court wishes to commend counsel for the respective parties in this proceeding for their excellent briefs and oral arguments, which have been most helpful to us in considering the issues presented.

(C.R.D. 74–8)

GIMBEL BROS., INC. *v.* UNITED STATES

On Plaintiff's Motion for Summary Judgment

Court Nos. 66/36724, etc.
on toys—racing car sets

Port of New York

[Motion denied.]

(Dated August 6, 1974)

Rode & Qualey (*William E. Melahn* of counsel) for the plaintiff.
Carla A. Hills, Assistant Attorney General (*Velta A. Melnbrencis*, trial attorney), for the defendant.

MALETZ, Judge: This is a motion by plaintiff for summary judgment in four consolidated actions. The question involved concerns the proper tariff classification of merchandise imported in 1964 and 1965 which, the parties agree, consisted of and was described in the invoices as:

> Racing car set[1] with over & under track chicane, lap counter, start & finish gates, 2 Cooper sports racing cars, 20 pcs. track, spare contacts; Stock car road set[2] with two (2) switches, remote control and with triple oval layout track; and Mini-Sport El.[3]

The imported merchandise was assessed at the rate of 35 percent ad valorem under item 737.90 of the tariff schedules, as modified, as "[t]oys * * * not specially provided for: [o]ther." It is claimed to be dutiable at the rate of 10 percent ad valorem under the provisions of item 734.20 of the tariff schedules, as modified, for "[g]ame machines * * * having mechanical controls for manipulating the action, and parts thereof."

[1] The racing car sets were manufactured by Kader Industrial Co., Ltd., Hong Kong.
[2] The stock car road sets were manufactured by Yonezawa of Tokyo.
[3] The Mini-Sport El sets were manufactured by the Hans Biller Company of West Germany.

To the extent relevant to the present motion, the record consists of the pleadings; two affidavits executed by William M. McDuffee, who has been plaintiff's buyer of toys for some 36 years; interrogatories directed by defendant to plaintiff and answered by McDuffee; and the deposition of McDuffee taken by defendant.[4]

Plaintiff contends that on the basis of this record, there is no genuine issue as to any material fact and that plaintiff is entitled to judgment as a matter of law. Defendant argues to the contrary that the record fails to establish the exact nature of the importations and that they are chiefly used as game machines. Thus, in defendant's view, genuine issues of fact remain and summary judgment must be denied.

In this setting, we now proceed to examine the record starting with McDuffee's first affidavit which was executed in November, 1970. In that affidavit, McDuffee deposed that he purchased racing and stock car sets (including those involved here) in Hong Kong and Japan for the plaintiff-importer during 1964–65; that he was personally familiar with these sets and had viewed them in operation at various stores of the plaintiff; that plaintiff's records showed that two of the protests here involved concerned the racing car sets which were imported from Hong Kong, one protest concerned the stock car road sets which were imported from Japan, and one protest concerned the Mini-Sport El sets which were imported from West Germany; and that he was personally familiar with the West German sets, although he did not purchase them.

McDuffee further deposed that "all the above-mentioned sets consist of two cars, start and finish gates, lap counters, tracks of various shapes, and manipulative controls"; that "the above sets are games to be played by two players, each controlling his own vehicle"; that the purpose of the game is for one player to cause his particular vehicle to reach the finish gate before his opponent"; that "[e]ach player may regulate the speed of his vehicle by a manipulative device so that the vehicle's speed may be increased, maintained or decreased, as desired by the player"; and that "[t]he game requires a degree of skill and dexterity on the part of each player or the vehicle will leave the track before coming to the finish gate."

McDuffee also deposed that samples of the imported items were not available since all had been sold; and that the "Kader Road Racing Set, No. 3755"—a sample of which, it was stated, accompanied the affidavit—was currently being sold in plaintiff's stores and was the same in all material respects as the imported items.[5]

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[4] At an earlier stage of this litigation, the court, over plaintiff's objections, granted defendant's cross-motion for an order extending its time to respond to plaintiff's motion for summary judgment until 30 days after notifying the court that it had completed its discovery. See *Gimbel Bros., Inc* v. *United States*, 69 Cust. Ct. 329, C.R.D. 72–25 (1972).

[5] The record does not contain a sample of the "Kader Road Racing Set, No. 3755."

A second affidavit of McDuffee, executed in July, 1972, was substantially similar to his earlier affidavit with the exception that in the latter affidavit McDuffee deposed that the "High Rev Dune Buggy Race Set"—a sample of which accompanied the affidavit—was currently being sold in plaintiff's stores and was the same in all material respects as the imported items and was illustrative thereof.[6]

In answer to defendant's interrogatories, McDuffee stated that the only document in existence which described the importations was an advertisement in the New York *Daily News* of September 27, 1964 which contained a photograph of the Kader set as assembled and stated in part:

> [S]pectacular racing fun and thrills for kids *and* adults
>
> * * * * * * *
>
> 20-piece race set with
> 2 racing cars! It's
> battery operated
>
> 6-feet long, 2-feet wide "figure 8"
> over-and-under track
>
> 2 colorful Cooper racing cars
>
> 2 individual push-button speed controls
>
> automatic lap counter
>
> starting gate and finish line
>
> guard rails and crash bails

On his deposition, McDuffee testified that "a racing car set is a competitive game consisting of two or more cars with track and * * * usually powered by electric or battery"; that a "stock car road set is exactly the same"; that he purchased items on the basis of actual samples and on the basis of his background and knowledge; that recently he had received from plaintiff's agent in Hong Kong a Kader Road Racing set which, in his view, was the same as that in question here;[7] that the speed of a racing car is increased or decreased by a control; that each car of a two-car set contains a control for the competitor; that the imported stock racing car sets made in Japan by Yonezawa were racing car sets; that the imported Mini-Sport El set made in Germany was not identical to but was in the same category as the Kader set in issue since it was a racing car set; that the sets as imported contained specific playing rules; that competition is involved whenever a set contains two cars, two tracks, two controls, and mechanical, battery or electric power; that there was no essential difference

[6] A sample of the "High Rev Dune Buggy Race Set" is contained in the record.

[7] This Kader set is contained in the record as defendant's exhibit D to McDuffee's deposition.

among the three types of importations in issue since they consisted of two or more cars, start and finish lines or gates, tracks of various shapes and kinds, and some kind of manipulative control on each car; and that many children merely let the vehicles travel around the track at the same time and "practice for when they meet a competitor."

An examination of the "Kader Road Racing Set" (defendant's exhibit D) and of the "High Rev Dune Buggy Race Set" reveals that they are of plastic material and, except for the size of their component parts, are essentially the same with respect to their characteristics and nature of operation. Each set contains two racing cars, unassembled prefabricated tracks, a plunger control mechanism in each car, and a battery box. When assembled and the batteries installed, the cars move along the tracks at the desired rate of speed by the manipulation of the plunger control device.

The Kader set which is contained in the record has accompanying instructions which read in pertinent part:

> The principal technique of operating a road racing car lies in the adequate control of its speed—that is, while the car is kept running at full speed, it is alertly guided against derailment. There will be an unbounded fun, if a game is played by two or more for a certain number of laps. * * *
>
> RACING RULES
>
> (1) After the appointment of a referee and the agreement on the number of competitors, the number of laps to be completed and the requisites for winning the game, the participating competitors may choose the car and the track in the presence of the Referee.
>
> (2) The competing cars shall be placed at the Start Sign (before the Lap Counter) and start running immediately after the Referee says: "Go".
>
> * * * * * * *
>
> (5) During the course of racing, either of the competitors shall not do anything to obstruct the other's car. Any such performance shall be considered as an offence against this rule. The Referee shall, thereupon, warn the competitor for correction. When such offence occurs three times, the results earned by the offender shall be nullified and the other competitor shall be declared as the winner.
>
> (6) The above are only for reference; competitors may make their own rules.

The High Rev Dune Buggy Race set similarly contains racing instructions. These read in pertinent part, as follows:

> SUGGESTED COMPETITIONS
>
> CHAMPIONSHIP RACING
>
> Start and Finish at the Start/Finish sign and count your own laps. Replace your own car if it spins off on a corner. The first to pass the finish sign wins.

HANDICAP RACING

Establish your own handicap depending on the skill of the driver and the degree of tune of the car. The limit car starts from the start line and the handicap car starts from a measured distance behind the start line. The first past the finish sign wins.

TIME TRIALS

Use either track, race one car for ten laps and time with a watch or clock. Record the time taken and see if you can improve your time as you gain more experience and skill.

* * * * * * *

HINTS FOR RACING DRIVERS

You will find, as all racing car drivers do, that you will have to reduce speed going into a corner, otherwise the car will spin off the track. Considerable skill can be developed in the fascinating study of where to shut off power and to re-apply power in cornering. Racing drivers do several practice laps before a race to find out the exact place before entering a corner where they should reduce speed. It is equally important to increase speed as soon as your car has actually started to turn the corner, if you want to win a race. Good racing drivers say that it is best to go slow into a corner and very fast out of it.

Against this background, we consider now the legal aspects. At the outset, it is to be noted that "the common meaning of the term 'game' for tariff purposes refers to a competition or contest which involves skill, chance or endurance or any combination of these three elements, and which is played according to rules with the objective of winning." *Mego Corp.* v. *United States*, 67 Cust. Ct. 19, 24, C.D. 4246 (1971). Further, "it is clear that the game provisions * * * are use provisions—which means that the articles must be chiefly used as games in order to be so classified." *Id.* at 25. See also e.g., *Western Importing Company* v. *United States*, 62 Cust. Ct. 231, 234, C.D. 3734, 297 F. Supp. 181, 183–4 (1969). Thus in the present case, it was incumbent upon plaintiff to establish that the imported merchandise was *chiefly* used as a game machine or game.

In this connection, the only evidence bearing even remotely on the use of the importations was (i) McDuffee's statement in his affidavits that he had "viewed them in operation in various * * * [plaintiff's] stores" and (ii) his deposition testimony that many children merely let the vehicles travel around the track at the same time and "practice for when they meet a competitor." Such evidence, of course, falls far short of establishing chief use.

There are, however, instances where examination of a sample shows that it has such particular characteristics and design features as to limit it to sole and exclusive use as a game. Thus, in *Montgomery Ward & Co.* v. *United States*, 66 Cust. Ct. 233, C.D. 4195 (1971), the court determined that the imported "Mother Hen Target Game

Set" which consisted of a target board, a spring-activated gun with plastic darts and four round eggs was classifiable as game equipment because it resulted in a "score" measuring one's skill or luck or combination thereof against a given set of rules. Of special significance was the court's conclusion that "examination of the sample, including the instructions, makes it apparent that the importation in question * * * is by its nature a game * * * [and that] there can be no conceivable use for it other than as a game." 66 Cust. Ct. at 238.

In the present case, by contrast, examination of the samples fails to show that the only conceivable use of the importations is as a game or game machine. No doubt the importations are used as a game. However, it is equally apparent from an examination of the samples that the imported merchandise is capable of being used not as a game but as a toy for the amusement of children or adults. For example, it seems clear that just as children or adults derive amusement from controlling the movement of electric trains along the tracks, so here they would derive similar amusement from merely controlling the cars' movement along the tracks. It also seems clear that many children would derive amusement from the sets by letting one or two cars simply travel around the track. In short, neither the samples nor the evidence in the record establishes that the importations were *chiefly* used as games or game machines.[8] Accordingly, plaintiff's motion for summary judgment is denied.

(C.R.D. 74–9)

DICTAPHONE CORPORATION v. UNITED STATES

Opinion and Order on Defendant's Motion to Dismiss for Plaintiff's Failure to File Timely Protest

Court No. 71–12–02021

Port of New York

[Motion denied.]

(Dated August 20, 1974)

Barnes, Richardson & Colburn (*Earl R. Lidstrom* of counsel) for the plaintiff.
Carla A. Hills, Assistant Attorney General (*Michael S. O'Rourke*, trial attorney), for the defendant.

NEWMAN, Judge: Defendant's motion to dismiss this action for plaintiff's failure to file a timely protest is denied.

[8] In view of this conclusion, it is unnecessary to reach the question as to whether here, in the absence of samples of the actual importations, the present record is sufficient to inform the court as to the essential characteristics of the imported stock car road sets and the Mini-Sport El sets. See e.g., *New York Merchandise Co., Inc.* v. *United States*, 66 Cust. Ct. 69, C.D. 4169 (1971).

The pertinent facts are:

Plaintiff made an entry of certain merchandise at the port of New York on April 13, 1970 and paid estimated duties in the amount of $2,730.74. On April 24, 1970 plaintiff was sent a customs form 5561 notifying it that action resulting in increased duties was contemplated, for the reason that the value would be advanced. On July 27, 1970 a notice of appraisement (customs form 5561) was mailed to plaintiff, stating: "The appraised value exceeds the entered value".

At this juncture it must be observed that inasmuch as no appeal for reappraisement was filed within the 30-day period prescribed by 19 U.S.C. § 1501 (1964), the appraisement became final after August 26, 1970.

On November 13, 1970 the entry was liquidated, and increased duties in the amount of $8,189.81 were assessed. On November 17, 1970, C. W. Brown, attorney-in-fact for plaintiff, wrote the following letter to the Regional Commissioner:

> "Enclosed are copies of Lep Transport Inc. invoice, copy of entry in question, a copy of your liquidation and invoice 30419814. I would like to know what comprises the liquidation amount of $10,920.55.
>
> "The invoice 125036 which is in question were castings as cast and some parts were not completed. They were at certain labor operations.
>
> "Your invoice of $8,189.81 is three times higher than the $2,730.74 Lep paid but total liquidation is four times higher than $2,730.74".

The following Bureau of Customs internal memorandum (customs form 3107) dated December 21, 1970 and signed by Paul E. Gelber appears in the official papers:

> "Please furnish this office with a complete report of the facts relating to the importer's *claim*, to assist the Reg. Comm. in determining whether *the claim may be allowed under Section 520(c)(1) of the Tariff Act*". (Emphasis added.)

The response to the above request for a report is noted on the same form:

> "The appraised value was the reason for increased duties. This office will adhere to its appraisement".

Replying to Brown's letter of November 17, 1970, the then Regional Commissioner wrote plaintiff on February 19,1971:

> "Reply is made to your letter dated November 17, 1970 *wherein you requested reconsideration of the appraised value* of certain

merchandise imported under Entry No. 495093 of February 21, 1970 liquidated on November 13, 1970.

"Please be advised that we have reviewed the appraised value in the light of your *claim* and adhere to our original action. However *this decision may be protested by the importer or his authorized agent within 90 days after the date of this letter by filing a protest* on Customs Form 19 in quadruplicate in accordance with Section 1514(a)(7), Title 19, United States Code". (Emphasis added.)

Complying with the Regional Commissioner's suggestion and within 12 days thereafter, on March 3, 1971, plaintiff filed a protest on customs form 19, stating:

"Entry – 495093 – was cleared by Lep Transport on steel castings (as purchased by Dictaphone Company, Ltd., Scotland). Duty paid on this was $2730.74 – and parts not completed but at various labor operations. Mr. Throupe was at New York customs in 1968 and explained the pricing policy to Mr. G. Santucci. Am enclosing a copy of this letter confirming his conversation with Mr. Santucci. New York Customs has on file our pricing policy. We, therefore, are protesting the additional liquidation figure of $8,189.81 on entry 495093 4/14/70".

The above protest form filed by plaintiff bears the following notation by the reviewing customs officer:

"The following action has been taken on this Protest,
Denied because:
[ ] Untimely Filed
[√] Original Customs decision reviewed and found to be correct
[ ] Other, namely_____
Other: Review Under Sec. 520(c)(1) denied.

Date June 11, 1971"

On December 7, 1971 plaintiff filed a summons initiating this civil action. Thereafter and in due course, on November 30, 1973, plaintiff filed a complaint contesting the appraisement.

In support of its motion to dismiss, defendant contends that plaintiff's protest of March 3, 1971 was filed more than 90 days after liquidation (November 13, 1970), and therefore was untimely under 19 U.S.C. § 1514(b)(2) (1970).

In opposition to the Government's motion, plaintiff contends that its protest is represented by Brown's letter of November 17, 1970, filed four days after liquidation, and thus is timely; and that the document filed by plaintiff on March 3, 1971 was "merely an elaboration" of Brown's letter of November 17, 1970 "by invitation of the government

on February 19, 1971". In support of its contention that Brown's letter constitutes a protest, plaintiff relies upon *Mattel, Inc.* v. *United States*, 72 Cust. Ct. 257, C.D. 4547 (1974).

Replying to plaintiff's opposition memorandum, defendant argues that "the letter in question does not rise to the stature of a protest within the contemplation of law notwithstanding the decision in *Mattel*", since such letter does not "convey enough information to apprise knowledgeable officials of the importer's intent and the relief sought".

Mattel has been considered carefully, but it is not deemed helpful in resolving the issue in this case.

I am of the view that Brown's letter of November 17, 1970 was not intended by the writer or regarded by the customs authorities as a protest within the purview of 19 U.S.C. § 1514 (1964). It is evident that the Regional Commissioner processed such letter as though it were a request to reliquidate the entry pursuant to the provisions of 19 U.S.C. § 1520(c)(1) (1964).[1] Such action is plainly indicated by the Gelber memorandum of December 21, 1970 and the Regional Commissioner's letter of February 19, 1971, whereby plaintiff was notified that the appraisement would be adhered to, but that plaintiff could file a protest within 90 days after the date of the letter pursuant to 19 U.S.C. § 1514(a)(7) (1970).[2] And as noted above, following the Regional Commissioner's advice plaintiff filed a protest on March 3, 1971, and the reviewing officer's action was: "Review Under Sec. 520(c)(1) denied".

Further, it is apparent that if the letter of November 17, 1970 were considered as a protest against the liquidation of November 13, 1970, as urged by plaintiff, the Regional Commissioner's "decision" of February 19, 1971 adhering to the appraisement must be regarded as the "notice of denial" of such protest within the purview of 28 U.S.C. § 2631(a)(1) (1970), thus commencing the running of the 180-day

[1] 19 U.S.C. § 1520(c)(1) (1964) provides:

"(c) Notwithstanding a valid protest was not filed, the Secretary of the Treasury may authorize a collector to reliquidate an entry to correct—

(1) a clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of a law, adverse to the importer and manifest from the record or established by documentary evidence, in any entry, liquidation, appraisement, or other customs transaction, when the error, mistake, or inadvertence is brought to the attention of the customs service within one year after the date of entry, appraisement, or transaction, or within sixty days after liquidation or exaction when the liquidation or exaction is made more than ten months after the date of entry, appraisement, or transaction; * * *"

[2] 19 U.S.C. § 1514(a)(7) (1970) provides in substance that refusal of the appropriate customs officer to reliquidate an entry under section 1520(c) becomes "final and conclusive * * * unless a protest is filed in accordance with this section * * *".

statute of limitations for filing a summons.[3] Accordingly, then, the summons in this action, filed on December 7, 1971 more than 180 days after the date of mailing of the Regional Commissioner's letter of February 19, 1971, would be untimely.

Also, as no appeal for reappraisement was filed pursuant to 19 U.S.C. § 1501 (1964), the appraisement became final prior to October 1, 1970, the effective date of Public Law 91–271.[4] Therefore, under section 203 of the public law,[5] administrative proceedings such as the appraisement, liquidation and protest were governed by the law in effect prior to October 1, 1970. Consequently, under section 1501 the appraisement could not be contested after August 26, 1970, whether a protest was filed on November 17, 1970, as claimed by plaintiff, or on March 3, 1971, as contended by defendant.

Under all the facts and circumstances, I conclude that plaintiff's protest of March 3, 1971, filed 12 days after the Regional Commissioner's decision of February 19, 1971, and at his suggestion, is timely for purposes of contesting that decision, which is construed as a refusal to reliquidate the entry pursuant to 19 U.S.C. § 1520(c)(1) (1964). Hence, defendant's motion to dismiss is denied.

Finally, it should be observed that plaintiff's complaint contesting the appraisement fails to state a claim upon which relief may be granted, since as noted above the appraisement became final after August 26, 1970. In the interest of justice, plaintiff is granted leave to file an amended complaint within 30 days of service of this order, to contest the Regional Commissioner's decision under 19 U.S.C. § 1520 (c)(1) (1964). If upon the expiration of said 30-day period, no such amended complaint shall have been filed by plaintiff, this action shall be deemed dismissed for failure to prosecute, without any further proceeding. In such event, the clerk is directed to enter an order of dismissal, without further notice.

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[3] 28 U.S.C. § 2631(a)(1) (1970) provides:

"(a) An action over which the court has jurisdiction under section 1582(a) of this title is barred unless commenced within one hundred and eighty days after:

(1) the date of mailing of notice of denial, in whole or in part, of a protest pursuant to the provisions of section 515(a) of the Tariff Act of 1930, as amended; * * *"

[4] Public Law 91–271 comprises: The Customs Courts Act of 1970; and The Customs Administrative Act of 1970.

[5] Section 203 of Public Law 91–271 reads:

"Titles II and III of this Act shall take effect with respect to articles entered, or withdrawn from warehouse for consumption, on or after October 1, 1970, and such other articles entered or withdrawn from warehouse for consumption prior to such date, the appraisement of which has not become final before October 1, 1970, and for which an appeal for reappraisement has not been timely filed with the Bureau of Customs before October 1, 1970, or with respect to which a protest has not been disallowed in whole or in part before October 1, 1970".

(C.R.D. 74-10)

MODERN CLOTHING, INC. *v.* UNITED STATES

On Plaintiff's Motion To Correct Filing Date on Summons and Defendant's Cross-Motion To Dismiss in Part

Court No. 74-2-00585

[Motion to correct records of clerk granted; cross-motion to dismiss denied.]

(Dated September 27, 1974)

Musgrave, Welbourn & Fertman (*Leonard M. Fertman* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Saul Davis* and *Michael S. O'Rourke*, trial attorneys), for the defendant.

MALETZ, Judge: This is a civil action brought by plaintiff pursuant to 28 U.S.C. (1970 ed.) § 2632(a) to contest the denial of six protests which were included in a single summons.[1]

Plaintiff has moved, pursuant to this court's rules 3.2(d)(2) and 3.2(d)(3), to correct the records of the clerk of the court with respect to the date of filing that was stamped by the clerk on the summons. Defendant in turn has filed a cross-motion to dismiss the action insofar as it relates to the entries covered by protest no. 2704-3-002819 on the ground that rule 3.2(d)(3) is "unconstitutional" and "*ultra vires*" and that the action as it relates to this protest was therefore not filed within the time prescribed by § 2631(a)(1).[2]

Rule 3.2(d) provides as follows:

> (1) The records of the clerk, including the date of filing stamped on the summons, shall be final and conclusive evidence of the date on which a summons was filed unless a motion to correct the record is made and granted pursuant to subparagraph (2) of this paragraph (d).

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[1] Section 2632(a) provides:

> (a) A party may contest denial of a protest under section 515 of the Tariff Act of 1930, as amended, or the decision of the Secretary of the Treasury made under section 516 of the Tariff Act of 1930, as amended, by bringing a civil action in the Customs Court. A civil action shall be commenced by filing a summons in the form, manner, and style and with the content prescribed in rules adopted by the court.

[2] Section 2631(a)(1) provides:

> (a) An action over which the court has jurisdiction under section 1582(a) of this title is barred unless commenced within one hundred and eighty days after:
>
> (1) the date of mailing of notice of denial, in whole or in part, of a protest pursuant to the provisions of section 515(a) of the Tariff Act of 1930, as amended; * * *

It is to be noted that in accordance with defendant's request, oral argument was held on the cross-motions.

> (2) A party who contends that the effective filing date of a summons should be a date other than the date shown in the records of the clerk may seek a corrective order by motion made pursuant to Rule 4.12, and the court may, upon satisfactory proof that the records of the clerk with respect to the filing date were incorrect, order the record corrected.
>
> (3) When a summons is received through the mail by the clerk after the last date allowed by a statute of limitations for the commencement of an action, the court may, upon motion made pursuant to subparagraph (2) of this paragraph (d), order the summons to be deemed to have been filed on the last date allowed if it is shown upon satisfactory proof: that the summons was sent by registered or certified mail, properly addressed to the clerk of the court at One Federal Plaza, New York, New York 10007, with return receipt requested; that it was deposited in the mail sufficiently in advance of the last date allowed for filing to provide for receipt by the clerk on or before such date in the ordinary course of the mail; and that the person sending the summons exercised no control over the mailing between the deposit of the summons in the mail and its delivery.

The facts—which have been established by an affidavit submitted by counsel for plaintiff—are not in dispute. They are as follows: The summons in the case was sent by certified airmail on Monday, February 25, 1974, properly addressed to the clerk of the court, with return receipt requested. It had affixed thereto the proper amount of airmail postage and was deposited personally by counsel for plaintiff in the airmail receptacle at the Los Angeles International Airport Post Office at about 4.30 p.m., February 25, 1974—which was prior to the final collection of airmail on that day. The posting of the summons on Monday, February 25, 1974, was sufficiently in advance of Wednesday, February 27, 1974—the last day for timely filing of the summons—to have reached the clerk's office by the last day in the ordinary course of the airmail. However, the summons was not delivered to the clerk's office until Thursday, February 28, 1974.[3] No control was exercised by the sender over the mailing of the summons between its deposit in the mail and its late delivery. From the foregoing, it is clear that all the mailing requirements prescribed by rule 3.2(d)(3) have been met by plaintiff—and defendant so concedes.

Defendant, however, challenges the statutory validity of rule 3.2(d)(3) contending, as previously mentioned, that it is "unconstitutional" and "*ultra vires*." As to this, it is important to observe that an identical argument challenging the validity of this rule was previously made

[3] The summons was stamped by the clerk "Received" and "Filed" February 28, 1974. Also, a photostatic copy of the return receipt, submitted by plaintiff, shows delivery by the post office on February 28, 1974.

by defendant and rejected by this court in *Texas Mex Brick & Import Co.* v. *United States*, 72 Cust. Ct. 291, C.R.D. 74–2, 371 F. Supp. 579 (1974). In *Texas Mex* Judge Newman held, in a cogent and well-reasoned opinion, that "rule 3.2(d)(3) is within the scope of the court's authority to adopt rules; and that such rule does not conflict with, abrogate, or extend the 180-day time period specified by 28 U.S.C. § 2631(a)(1) for the commencement of an action by filing a summons." 72 Cust. Ct. at 295, 371 F. Supp. at 584. To quote from his opinion (72 Cus. Ct. at 293–4, 371 F. Supp. at 582):

> Generally, a summons or other paper is "filed" when it is *received* by the court. *Andrew Dossett Imports, Inc.* v. *United States*, 69 Cust. Ct. 334, C.R.D. 72–26, 351 F. Supp. 1404 (1972). However, rule 3.2(d)(3) provides, in effect, that a summons "received" after the expiration of the filing period specified in § 2631(a)(1) may be deemed to have been timely "filed" if such summons was mailed in the manner prescribed. Therefore rule 3.2(d)(3), in effect, creates an exception to the general rule that a summons is filed upon receipt, and provides instead that the summons is deemed filed on the last date allowed for commencing an action. I am clear that this court has authority to explicitly provide that something other than receipt may constitute the filing of the summons, particularly since under § 2632(a) Congress specifically authorized this court to adopt rules governing the "manner" of filing a summons.
>
> While rule 3.2(d)(3) plainly contemplates *receiving* a summons after the expiration of the statutory filing period (if mailed in the prescribed manner), such rule does not purport to extend the statutory period for *filing* a summons, since if the requisites of mailing are complied with, the summons is deemed timely filed (viz., on the last date allowed under § 2631(a)(1)). Thus, the rule merely purports to make reasonable provision for delays in the *receipt* of summonses sent through the mail, not delays in *filing* summonses. [Emphasis in original.]

Further in *Texas Mex*, Judge Newman, after discussing the case of *Charlson Realty Company* v. *United States*, 384 F.2d 434 (Ct.

Hence, it is indeed appropriate that this court has promulgated Claims, 1967), added (72 Cust. Ct. at 295, 371 F. Supp. at 583):

> Significantly, the Court of Claims promulgated this rule as a
> a rule very similar to rule 21(b)(2)(iii) of the Court of Claims.
> and parties invoking Customs Court jurisdiction necessarily de-
> result of *Charlson*, which rule, in point of fact, is known as the
>
> This court, like the Court of Claims, has national jurisdiction,
> "Charlson Rule". See Rules of the United States Court of Claims,
> Index at page 174. And significantly, too, the Customs Court
> pend greatly upon the mail for the service and filing of papers.
> adopted the "Charlson Rule" with minor changes in language to
> conform to our practice.

Suffice it to say that I am in entire accord with the decision in *Texas Mex* and therefore hold that rule 3.2(d)(3) is a statutorily valid exercise of the court's authority.

Finally, defendant requests that if its cross-motion to dismiss in part be denied, the court should issue a statement pursuant to rule 13.2(a) that a controlling question of law is involved as to which there is a substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate determination of the litigation. This request for issuance of a rule 13.2(a) statement is denied. For, in my view, there is no controlling question of law involved as to which there is a substantial ground for difference of opinion. Nor do I believe that an immediate appeal from the order may materially advance the ultimate determination of the present litigation.

Accordingly, it is ORDERED that:

1. Plaintiff's motion to correct the records of the clerk, including the date of filing stamped on the summons, be granted.
2. The summons in this action shall be deemed to have been filed on February 27, 1974; and the records of the clerk, including the date of filing stamped on the summons, shall be corrected to show that the date of the filing of the summons was February 27, 1974.
3. Defendant's cross-motion to dismiss in part be denied.
4. Defendant's request for issuance of a rule 13.2(a) statement be denied.

(C.R.D. 74–11)

HAMBRO AUTOMOTIVE CORPORATION *v.* UNITED STATES

Memorandum Opinion and Order

Court Nos. 70/55539, etc.

[Motion to compel defendant to answer interrogatories and produce documents granted in part and denied in part.]

(Dated September 30, 1974)

Alan S. Hays for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Velta A. Melnbrencis*, trial attorney), for the defendant.

WATSON, Judge: Plaintiff has moved to compel defendant to provide further answers to certain of plaintiff's interrogatories and to produce certain requested documents.

Plaintiff's interrogatory number 10 asks for the date upon which a letter written by the Acting Commissioner of Customs and dated

September 20, 1960, was transmitted to all ports on the Customs Information Exchange. Defendant first responded by referring to a previous answer in which it acknowledged the transmission of the letter to the ports of Houston, San Francisco and Chicago, indicated ignorance of the exact date and, although obliquely admitting the transmission to all ports, objected to responding with respect to all 46 customs districts. In a supplemental response, defendant indicated that the letter in question was transmitted to all ports on the Customs Information Exchange via CIE 1331/57 Suppl. No. 1, dated September 26, 1960.

It is clear from plaintiff's motion that it was not aware of defendant's supplementary response when it made its motion to compel. Defendant's supplementary response is properly responsive and plaintiff's motion to compel an answer with respect to interrogatory number 10 must accordingly be denied.

Plaintiff's interrogatory number 20 asks for the detailed duties of the U.S. Appraiser of Merchandise as of November 2, 1960. Defendant responded by citing the relevant statute and regulations, i.e., 19 U.S.C. 1500 and part 14 of C.F.R. Since the "U.S. Appraiser" was the appraiser at the port of New York, this response is adequate and as precise as warranted by plaintiff's interrogatory. Accordingly, plaintiff's motion must be denied as to this interrogatory as well.

Plaintiff's interrogatory number 25 asks whether a letter from the U.S. Appraiser to the Director of Export Finance for British Motor Corporation was transmitted to any other port by means other than the C.I.E. Defendant stated in its supplementary response that, although a copy of the letter in question was in the files at the ports of Houston and San Francisco, it could not determine how and when such copies had been transmitted. Although this answer may be disappointing to plaintiff, it is responsive and an order to compel a further answer is not justified.

In its supplementary response to interrogatories 28 and 29, defendant has supplied the names of certain customs examiners who may have been involved in the processing of the entries in dispute at the ports of Houston, San Francisco and Chicago. This was in response to plaintiff's request for the name of each person in those ports who was involved with processing the entries involved at those ports. Under the circumstances and without greater precision in the interrogatory, I consider this an adequate response.

Plaintiff's 14th and 17th requests, related to the production of documents, request the defendant to produce documents which support defendant's position that the actions of which plaintiff complains were matters of construction of the law and not clerical errors, mistakes of fact or other inadvertencies. Since defendant has made it plain that

its position is based on its evaluation of the notices or communications made by plaintiff and not on the basis of any special documents in defendant's possession, plaintiff's motion is without merit as to these two requests.

The final request in dispute is number 4 in which plaintiff requested copies of all communications among the various ports and among the Bureau of Customs and any port or official thereof during the time periods covered by the complaint and concerning the entries set forth in exhibit A to the complaint.

Defendant supplied what it considered to be all non-privileged communications between the ports of Houston, San Francisco, Chicago and Washington headquarters but objected to communications prepared for this litigation on the ground of attorney-client privilege and communications expressing opinions on the ground of executive privilege. Plaintiff has disclaimed any desire for documents covered by the attorney-client privilege so that the dispute centers on the other communications within the Bureau of Customs regarding the entries under litigation and concerning which defendant has asserted executive privilege.

For the procedural reasons set out hereinafter, I will grant plaintiff's motions as to its request number 4.

It must be kept in mind that executive privilege as it is relevant here, is asserted within the framework of the judicial process. It is a marked exception to the general rule that all evidence ought to be available for a trial. As the Supreme Court recently stated, "Whatever their origins, these exceptions to the demand for every man's evidence are not lightly created nor expansively construed, for they are in derogation of the search for truth. [Footnote omitted.]" *United States* v. *Nixon*, 94 S.Ct. 3090, 3108 (July 24, 1974).

In this context I would add that considering the exceptional nature of executive privilege when asserted in a judicial proceeding it should be claimed in a definitive and authoritative manner, In other words, it should be plain that the privilege is being asserted pursuant to the will of the party for whose protection it exists and concerning specifically identifiable material and not in a merely tactical or reflexive manner by counsel.

Since the privilege may be waived, even the presence of all the theoretical requirements for the validation of executive privilege may be irrelevant. I cannot accept the mere advancement of an argument by the Department of Justice for executive privilege as an *assertion* of executive privilege or even treat it as an "informal" claim, a hybrid form to the creation of which I do not wish to contribute. A privilege is either claimed or waived. An "informal" claim can only lead to an

"informal" opinion which is advisory in nature and contrary to judicial practice.

By logic and law, I believe that without express authorization the Department of Justice can no more assert executive privilege on behalf of another department of the executive branch than it can testify for another department.

The appropriate authority in the department concerned must make a direct assertion of executive privilege in writing to the court and identify with a reasonable degree of precision the items concerning which privilege is asserted. This is the very least which can be demanded to insure both that the privilege is being genuinely and thoughtfully asserted and that the trial judge is sufficiently informed to rule on the matter.

Procedurally speaking, I have in mind the decision in *United States* v. *Reynolds*, 345 U.S. 1, 10–11, in which the Supreme Court stated as follows:

> * * * On the record before the trial court it appeared that this accident occurred to a military plane which had gone aloft to test secret electronic equipment. Certainly there was a reasonable danger that the accident investigation report would contain references to the secret electronic equipment which was the primary concern of the mission.
>
> Of course, even with this information before him, the trial judge was in no position to decide that the report was privileged until there had been a formal claim of privilege. Thus it was entirely proper to rule initially that petitioner had shown probable cause for discovery of the documents. Thereafter, when the formal claim of privilege was filed by the Secretary of the Air Force, under circumstances indicating a reasonable possibility that military secrets were involved, there was certainly a sufficient showing of privilege to cut off further demand for the documents on the showing of necessity for its compulsion that had then been made.

It seems apparent to me that if the court is to make a clear and dispositive decision, a fundamental requirement is that the assertion of privilege be clear and definite. I have no desire to exalt formality for its own sake. However, the principle that issues raised before a court ought to be raised in a manner which leaves no doubt as to the nature and definition of the dispute deserves to be exalted since this lends a precision and conclusiveness to a court's findings which is often lacking in less circumscribed proceedings. Procedurally, there is no reason for the court to go further into this area of privilege unless and until it is convinced that privilege is definitely being asserted by the proper party.

For this reason alone plaintiff's motion to compel defendant to produce the documents requested in its request number 4 shall be granted. It is therefore,

ORDERED that plaintiff's motion as regards its request number 4 be, and the same hereby is, granted, and it is further

ORDERED that plaintiff's motion as regards the remaining interrogatories and requests be, and the same hereby is, denied.

(C.R.D. 74–12)

ENGLISHTOWN CORP. *v.* UNITED STATES

Memorandum to Accompany Order

Court No. 67/83741

[Motion granted.]

(Dated November 6, 1974)

Allerton deC. Tompkins for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Robert Masters*, trial attorney), for the defendant.

FORD, Judge: This case was dismissed *sua sponte* on September 23, 1974, pursuant to the provisions of rule 8.3(b)(2) which provides as follows:

(b) Involuntary Dismissal:

* * * * * * *

(2) An action in which issue has been joined, but no further proceedings have been instituted for a period of 1 year, may be dismissed by the court on its own motion for lack of prosecution unless good cause is shown for such delay.

Counsel for plaintiff moved to set aside the dismissal on October 10, 1974, and defendant filed its statement of no objection on October 25, 1974. Plaintiff states and defendant admits a sample of the involved merchandise was submitted to customs for consideration of a proposed stipulation, or that in the alternative by amendment to the pleadings, plaintiff could submit a motion for judgment on the pleadings. Counsel for plaintiff contends the matter was dismissed without request by the court for a status report nor did the court inquire if there was good cause for the delay.

Plaintiff further contends there is no requirement contained in rule 8.3(b)(2) to call to the court's attention any written or oral negotiations by the parties. It is also contended by plaintiff that to submit periodic reports to the court in every complaint is unreasonable.

In order to clarify the status of this matter in general and the position of this member of the court, a review of the procedure followed prior to dismissal under rule 8.3(b)(2) is deemed pertinent. A check of the clerk's docket sheet is made to determine whether any

action has been taken since joinder. The official papers are then requested to determine whether the case may be out on stipulation.

While counsel finds no requirement for plaintiff to submit information to the court of negotiations or further action after joinder, it is the position of this member of the court that rule 8.3(b)(2) not only speaks for itself but that the rule is reasonable. Plaintiff's counsel has knowledge of the facts and knows, or should know, of the time limit provided for in the rules. A brief notice to the court of the status of the case prior to the expiration of the time limit would not unduly burden plaintiff's attorney.

Until the enactment of the recent legislation affecting the practice of this court, and the concurrent court rules, calendars were regularly called. By that method, the court could and did control the activity of the cases. Under the present practice, there are no calendars. Other means are therefore required for the court to ascertain the status of cases in order to retain control of them. It is the responsibility of counsel to handle cases in accordance with the rules.

Rule 8.3(b)(2) was placed in the rules in order that the court might clear its files of overage cases after ample opportunity has been given counsel to prepare a case for trial or other disposition. Under rule 4.4(a), a complaint is filed when plaintiff desires to try or otherwise prosecute an action. A full year is allowed after issue is joined. During that period, counsel is presumably preparing for trial or other disposition of the case. He is not required to answer calendar calls in the interim, as in our former practice. Counsel knows, or should know, that his case is subject to dismissal at the end of a year after joinder of issue. He can avoid such dismissal by informing the court of the status of the case, indicating when there is good cause for delay. Otherwise, the court is justified in assuming counsel does not intend to prosecute the case. That the latter is true has appeared from my experience with dismissals under rule 8.3(b)(2). In the vast majority of cases, no objection has been raised or motion for rehearing filed.

In the instant case, plaintiff has had more than a year after joinder in which to prosecute its action. A review of the papers indicates the entry was made on July 28, 1966, was liquidated on May 31, 1967, and a protest filed on July 21, 1967. For plaintiff's counsel to complain that "the court did not request a status report on said action" where the record indicates the protest was filed in 1967, is to make a mockery of the doctrine of reasonableness. It is suggested that the answer to counsel's complaints lies in a more vigorous prosecution of his cases.

Many of the dismissals under rule 8.3(b)(2) could be prevented if counsel would utilize the tool granted by rule 14.7(a) under which a

test case is designated and the balance of the cases suspended. Full utilization of this rule is far from a fact. The rules have been adopted in order to facilitate disposition of cases and where necessary encourage counsel for both the importer and the Department of Justice to take action.

However since there is no objection, plaintiff's motion will be granted upon the terms and conditions set forth in the order.

ABSTRACTS OF CUSTOMS COURT DECISIONS

Protests

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/494	Ford, J. July 2, 1974	Import Assoc. of America, Inc.	68/62346, etc.	Item 684.70 13% or 12%	Item 685.25 11% or 10%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	San Francisco Earphones imported with radios
P74/495	Ford, J. July 2, 1974	Lafayette Electronics Int'l, Inc., et al.	68/48756, etc.	Item 684.70 13%	Item 685.25 11%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	New York Earphones imported with radios
P74/496	Ford, J. July 2, 1974	Sekiya International New York, Inc., et al.	66/36986, etc.	Item 684.70 15%	Item 685.22 12.5%	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021)	New York Earphones

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/497	Richardson, J. July 2, 1974	Baylis Brothers Co.	67/27663, etc.	Item 682.03 42.5%	Item 807.00 Upon full value of imported article (smocked dress fronts) less cost of value of American components (fabric pieces of dress fronts); no separate values returned by customs official; entries returned to district director for purpose of determining value of fabric pieces	U.S. v. The Baylis Brothers Co. (C.A.D. 1026)	San Juan American goods returned (smocked dress fronts)
P74/498	Richardson, J. July 2, 1974	Halvorson, Inc:	72-5-01205	Item 692.35 8%	Item 692.30 Free of duty	U.S. v. F. W. Myers & Co., Inc. (C.A.D. 1007)	Sault Ste. Marie (Detroit) A tractor

P74/499	Richardson, J. July 2, 1974	Import Associates of America, Inc.	66/80026	Item 653.40 19%	Item 688.40 11.5%	Ross Products, Inc. v. U.S. (C.A.D. 994) U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111)	Los Angeles Bird cages with flowers and lights
P74/500	Richardson, J. July 2, 1974	W. D. Sales Co.	67/23465, etc.	Item 685.90 17.5%	Item 685.70 8.5%	Fedtro, Inc. v. U.S. (C.A.D. 1028)	San Francisco Automobile flasher switches
P74/501	Richardson, J. July 2, 1974	W. D. Sales Co.	67/46338, etc.	Item 685.90 17.5%	Item 685.70 8.5%	Fedtro, Inc. v. U.S. (C.A.D. 1028)	Houston Automobile flasher switches
P74/502	Richardson, J. July 2, 1974	W. D. Sales Co.	68/13757, etc.	Item 685.90 17.5%	Item 685.70 8.5%	Fedtro, Inc. v. U.S. (C.A.D. 1028)	Houston Automobile flasher switches
P74/503	Re, J. July 2, 1974	Delaware Mercantile Co.	71-6-00279	Item 732.36 21%	Item 642.20 13%	Agreed statement of facts	Chicago Caliper brake cables of wire
P74/504	Re, J. July 2, 1974	Fuel Injection Sales & Service, Inc.	68/40831	Item 660.42, 680.27 or 660.94 10%	Item 660.92 6%	Korody-Colyer Corp. v. U.S. (C.D. 4212)	Los Angeles Nozzles for fuel injection pumps
P74/505	Ford, J. July 3, 1974	Import Assoc. of America et al.	69/19693, etc.	Item 684.70 15%	Item 685.22 12.5%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	San Francisco Earphones imported with radios
P74/506	Ford, J. July 3, 1974	Nichimen Co., Inc., et al.	69/28908(A), etc.	Item 684.70 13% or 12%	Item 685.25 11% or 10%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	New York Earphones imported with radios
P74/507	Ford, J. July 3, 1974	North American Foreign Trading Corporation	67/58725, etc.	Item 684.70 15%	Item 685.22 12.5%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	New York Earphones imported with radios

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/508	Ford, J. July 3, 1974	North American Foreign Trading Corp. et al.	68/260, etc.	Item 684.70 15%	Item 685.22 12.5%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	San Francisco Earphones imported with radios
P74/509	Ford, J. July 3, 1974	Oriental Exporters, Inc.	66/39822, etc.	Item 684.70 15%	Item 685.22 12.5%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	New York Earphones imported with radios
P74/510	Ford, J. July 3, 1974	Westinghouse Electric Corp. et al.	67/25810, etc.	Item 684.70 15%	Item 685.22 12.5%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	New York Earphones imported with radios
P74/511	Ford, J. July 3, 1974	Westinghouse Electric Corp.	67/78554, etc.	Item 684.70 15% or 13%	Item 685.22 12.5% Item 685.25 11%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	New York Earphones imported with clock radios
P74/512	Landis, J. July 3, 1974	United China & Glass Co.	64/7659	Par. 212 60% or 45% and 10¢ per doz. pcs.	Par. 212 45%	W. Kay Company, Inc. v. U.S. (C.D. 2484) New York Merchandise Co., Inc. v. U.S. (C.D. 3463)	San Francisco Decorated porcelain cups and saucers
P74/513	Re, J. July 3, 1974	George S. Bush & Co., Inc., et al.	68/18096, etc.	Item 651.75 At various ad valorem equivalent rates as set forth in schedule A, attached to decision and judg-	Item 651.75 At appropriate specific or compound rate (set forth in schedule in column "Claimed	Import Associates of America et al. v. U.S. (C.A.D. 961)	Seattle Flatware sets

				ment in column headed Assessed Ad Valorem Equivalent Rate	Rate"), the specific rate or specific portion of compound rate being applied once against each tool, knife, fork, spoon or other utensil in the set		
P74/514	Re, J. July 3, 1974	Fuel Injection Sales & Service, Inc., et al.	68/14015, etc.	Item 660.54 10%, 9% or 8%	Item 660.92 6%, 5% or 4.5%	Korody-Colyer Corp. v. U.S. (C.D. 4212)	Los Angeles Nozzles for fuel injection pumps
P74/515	Re, J. July 3, 1974	Holmar International Corp. et al.	66/71134, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P74/516	Re, J. July 3, 1974	Holmar International Corp. W. J. Byrnes & Co. of N.Y., Inc., et al.	66/7847, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P74/517	Re, J. July 3, 1974	Holmar International Corp. W. J. Byrnes & Co. of N.Y., Inc., et al.	67/49468, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P74/518	Re, J. July 3, 1974	C. Itoh & Co. (America), Inc., et al.	68/24004, etc.	Item 772.15 or 774.60 17%, 15%, 13.5%, 11.5%	Item 772.35 12.5%, 11%, 10%, 8.5%	Venetianaire Corp. of America v. U.S. (C.A.D. 1084)	New York Mattress and pillow covers

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/519	Re, J. July 3, 1974	Korody Colyer Corp.	69/53583, etc.	Item 660.54 10%, 9% or 8%	Item 660.92 6%, 5%, or 4.5%	Korody-Colyer Corp. v. U.S. (C.D. 4212)	Los Angeles Nozzles for fuel injection pumps
P74/520	Re, J. July 3, 1974	McHutchison & Co., Inc.	69/50458, etc.	Item 222.60 23% or 20%	Item 666.00 Free of duty	Agreed statement of facts	New York Horticultural implements used chiefly for horticultural purposes
P74/521	Re, J. July 3, 1974	North American Foreign Trading Corp.	67/76827, etc.	Item 684.70 15% or 13%	Item 685.22 12.5% Item 685.25 11%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P74/522	Boe, C. J. July 5, 1974	Adolco Trading Co., Inc.	71-4-00045, etc.	Item 706.60 20%	Item 774.60 11.5% or 10%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Plastic shopping bags
P74/523	Boe, C. J. July 5, 1974	Adolco Trading Co., Inc.	72-6-01398	Item 706.60 20%	Item 774.60 10%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Plastic shopping bags
P74/524	Boe, C. J. July 5, 1974	K. Gimbel Accessories, Inc.	70/34307, etc.	Item 706.60 20%	Item 774.60 13.5% and 11.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Plastic shopping bags
P74/525	Boe, C. J. July 5, 1974	Libbey-Owens Ford Glass Company American Express Co.	67/1566, etc.	Item 652.98 19% Item 674.53 14%	Item 678.50 10%	Pittsburgh Plate Glass Co. v. U.S. (C.D. 4128)	San Francisco Parts of machines, n.s.p.f.

P74/526	Boe, C. J. July 5, 1974	Ohio Bag Corp.	74-3-00705	Item 706.60 20%	Item 774.60 8.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Plastic shopping bags
P74/527	Landis, J. July 5, 1974	Asiatic Petroleum Corp.	66/37052, etc.	Par. 1558 10%	Par. 1733 Free of duty	Asiatic Petroleum Corp. v. U.S. (C.A.D. 1029)	New York Shell Alexia Oil A
P74/528	Landis, J. July 5, 1974	Judson Sheldon International Corp.	66/59940, etc.	Item 653.40 19%	Item 688.40 11.5%	Ross Products, Inc. v. U.S. (C.A.D. 994) U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111)	Chicago Bird cages, lanterns or similar articles with flowers and lights
P74/529	Watson, J. July 5, 1974	J. F. Braun & Sons, Inc., et al.	69/1825, etc.	Item 145.55 15¢ per lb. (entry 52144) Item 145.46 8¢ per lb. (entries 867818, 78349)	Duty should not have been assessed on merchandise reported by the customs inspector as "manifested, not found"	Agreed statement of facts	New York Shortage: 68 cases of shelled walnuts (entry 52144); 7 bags of shelled filberts (entry 867818); 30 bags of shelled filberts (entry 78349)
P74/530	Watson, J. July 5, 1974	R. J. Saunders & Co., Inc.	66/2813	Par. 397 19%	Par. 353 13¾%	R. J. Saunders & Co., Inc. v. U.S. (C.D. 4387)	New York Shaver cases.
P74/531	Re, J. July 15, 1974	Border Brokerage Company, Inc.	70/19113	Item 774.60 13.5%	Item 666.00 Free of duty	Judgment on the pleadings U.S. v. Border Brokerage Company, Inc. (C.A.D. 1058)	Blaine (Seattle) Plastic planting bullet guns
P74/532	Re, J. July 5, 1974	Border Brokerage Co., Inc.	70/27084	Item 774.60 13.5%	Item 666.00 Free of duty	Judgment on the pleadings U.S. v. Border Brokerage Company, Inc. (C.A.D. 1058)	Blaine (Seattle) Planting bullets

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				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/533	Re, J. July 5, 1974	Border Brokerage Co., Inc.	70/35032	Item 774.60 11.5%	Item 666.00 Free of duty	Judgment on the pleadings U.S. v. Border Brokerage Company, Inc. (C.A.D. 1058)	Blaine (Seattle) Plastic planting bullets and trays
P74/534	Re, J. July 5, 1974	Border Brokerage Co., Inc.	70/35161	Item 774.60 11.5%	Item 666.00 Free of duty	Judgment on the pleadings U.S. v. Border Brokerage Company, Inc. (C.A.D. 1058)	Blaine (Seattle) Plastic planting bullets and trays
P74/535	Re, J. July 5, 1974	C & M Import & Export Corp. et al.	66/60271, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P74/536	Re, J. July 5, 1974	C.M. Import & Export Corp. et al.	67/26725, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	Chicago Earphones (not headphones) of a type chiefly used with radios
P74/537	Re, J. July 5, 1974	Marubeni Iida America, Inc.	69/43873	Item 684.70 12%	Item 685.25 10%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P74/538	Re, J. July 5, 1974	Mercury Radio & Battery Corp. et al.	68/59759, etc.	Item 684.70 13%	Item 685.25 11%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios

P74/539	Re, J. July 5, 1974	Mitsubishi International Corp.	68/46476, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P74/540	Re, J. July 5, 1974	Montgomery Ward & Co. et al.	68/60003, etc.	Item 684.70 13%	Item 685.25 11%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P74/541	Re, J. July 5, 1974	Oriental Exporters, Inc., et al.	66/18364, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P74/542	Re, J. July 5, 1974	J.T. Steeb & Co.	62/11846, etc.	Par. 412 16 2/3%	Par. 1803(1) Duty free but with assessment of tax under sec. 4551(1), I.R.C. 1954, as modified, at $1.50 per 1000 Ft. board measure	Border Brokerage Co. et al. v. U.S. (C.D. 2461)	Portland, Oreg. Lauan lumber
P74/543	Re, J. July 5, 1974	Z & T Importing Co., Inc., et al.	66/64342, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P74/544	Re, J. July 16, 1974	C. Itoh & Co. (America), Inc.	66/6943, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statment of facts	New York Earphones (not headphones) of a type chiefly used with radios

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/545	Re, J. July 16, 1974	C. Itoh & Co. (America), Inc.	66/54845, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P74/546	Re, J. July 16, 1974	Marubeni Iida America, Inc., et al.	68/38741, etc.	Item 684.70 15% and 13%	Item 685.22 12.5% Item 685.25 11%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P74/547	Re, J. July 16, 1974	Sekiya International N.Y., Inc.	67/7497	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P74/548	Re, J. July 16, 1974	Venetianaire Corp. of America et al.	68/13072, etc.	Item 772.15 17%, 15% or 13.5%	Item 772.35 12.5%, 11% or 10%	Venetianaire Corp. of America v. U.S. (C.A.D. 1084)	New York Plastic mattress and pillow covers and protectors
P74/549	Re, J. July 16, 1974	Venetianaire Corp. of America	70/25652, etc.	Item 772.15 15%, 13.5% or 11.5%	Item 772.35 11%, 10% or 8.5%	Venetianaire Corp. of America v. U.S. (C.A.D. 1084)	New York Plastic mattress and pillow covers and protectors
P74/550	Boe, C. J. July 17, 1974	S. S. Kresge Co.	71-6-00232	Item 706.60 20%	Item 774.60 11.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Shopping bags
P74/551	Newman, J. July 17, 1974	Amerex Trading Corp.	66/75077, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios

P74/552	Re, J. July 17, 1974	Delaware Mercantile Co., Inc.	67/63264, etc.	Item 732.36 30% or 27%	Item 642.20 19% or 17%	Agreed statement of facts	New York Cables in c.v. of wire fitted with fittings
P74/553	Re, J. July 17, 1974	Gosho Trading Co., Inc.	66/75080, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P74/554	Re, J. July 17, 1974	North American Foreign Trading Corp.	69/49559	Item 684.70 13%	Item 685.25 11%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P74/555	Boe, C.J. July 18, 1974	F. J. Strauss, Inc.	63/18021, etc.	Par. 371 30%	Par. 353 13 ¾%	S. Hiller & Co. et al. v. U.S. (C.D. 3082)	New York Bicycle horns
P74/556	Ford, J. July 18, 1974	B.P.M. International, Ltd., et al.	66/41348, etc.	Item 684.70 15% (items marked "A") Item 706.08 20% (items marked "B")	Item 685.22 12.5% (items marked "A" and "B")	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021) (items marked "A") Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977) (items marked "B")	New York Earphones (items marked "A") Cases for transistor radios (entireties with radios) (items marked "B")
P74/557	Ford, J. July 18, 1974	Mitsui & Co., Ltd.	66/60705, etc.	Item 684.70 15%	Item 685.22 12.5%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	New York Earphones imported with radios
P74/558	Ford, J. July 18, 1974	Nichimen Co., Inc., et al.	69/36266(A), etc.	Item 684.70 15%	Item 685.22 12.5%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	New York Earphones imported, and chiefly used, with radios
P74/559	Maletz, J. July 18, 1974	Exhibit Sales, Inc., et al.	69/22024, etc.	Item 683.70 35%	Item 737.90 31%, 28% or 24%	Amico, Inc., etc. v. U.S. (C.D. 4494)	Philadelphia Toy flashlights

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				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/560	Newman, J. July 18, 1974	ITT Export Corp. et al.	66/63017, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P74/561	Newman, J. July 18, 1974	Mitsui & Co., Ltd.	65/25252, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	Los Angeles Earphones (not headphones) of a type chiefly used with radios
P74/562	Newman, J. July 18, 1974	North American Foreign Trading Corp.	67/44567, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P74/563	Newman, J. July 18, 1974	Precise Imports Corporation et al.	67/63488, etc.	Item 207.00 16⅔% or 15%	Item 727.35 10.5% or 9%	The American Import Co. et al. v. U.S. (C.D. 3807)	New York Gun racks
P74/564	Newman, J. July 18, 1974	Schenley Affiliated Brands Corp., T/A Schenley Import Co.	70/61340	Item 774.60 13.5%	Merchandise reported "manifested, not found," was not imported; duty should not have been assessed on said merchandise	Agreed statement of facts	New York Shortage; 2 cases of pocket calendars
P74/565	Ford, J. July 19, 1974	Aimcee Wholesale Corp. & Associated Merchandising Corp. et al.	68/62795, etc.	Item 684.70 15%	Item 685.22 12.5%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	New York Earphones imported with radios
P74/566	Ford, J. July 19, 1974	C.M. Import & Export Corp.	69/37826, etc.	Item 684.70 15%	Item 685.22 12.5%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	Chicago Earphones imported with radios

P74/567	Ford, J. July 19, 1974	B.P.M. International, Ltd.	66/17128, etc.	Item 684.70 15%	Item 685.22 12.5%	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021)	New York Earphones which are other parts of radio reception apparatus (items marked "A") Earphones (items marked "B")
P74/568	Ford, J. July 19, 1974	Nichimen Co., Inc., et al.	68/33404, etc.	Item 684.70 13%	Item 685.25 11%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	New York Earphones imported with radios
P74/569	Ford, J. July 19, 1974	Sony Corporation of America et al.	66/80723, etc.	Item 684.70 15% (items marked "A") Item 706.08, 706.60 or 791.65 20% (items marked "C")	Item 685.22 12.5% (items marked "A" and "C")	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021) (items marked "A") Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977) (items marked "C")	New York Earphones (items marked "A") Cases for transistor radios (entireties with radios) (items marked "C")
P74/570	Ford, J. July 19, 1974	Sony Corp. of America	69/33963, etc.	Item 684.70 15% or 13%	Item 685.25 11% Item 685.22 12.5%	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021)	New York Earphones
P74/571	Richardson, J. July 19, 1974	Ross Products, Inc.	67/84056	Item 653.40 19%	Item 688.40 11.5%	Ross Products, Inc. v. U.S. (C.A.D. 994) U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111)	Baltimore Bird cages with flowers and lights
P74/572	Newman, J. July 19, 1974	John Dritz & Sons, Inc.	67/41613	Item 389.70 20%	Item 256.90 17.5%	Judgment on the pleadings John Dritz & Sons, Inc. v. U.S. (C.D. 3231)	San Francisco Paper sewing baskets
P74/573	Re, J. July 19, 1974	Gambles Import Corp.	71-11-01771	Item 737.30 12.5%	Item 685.23 11%	Judgment on the pleadings U.S. v. New York Merchandise Co., Inc. (C.A.D. 1004)	Los Angeles Solid-state tubeless radio receivers ("shaggy dog with radio")

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				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/574	Boe, C. J. July 22, 1974	M. B. Daniels & Co., Inc.	73-1-00236, etc.	Item 706.60 20%	Item 774.60 8.5%	Adolco Trading Corp. et al. v. U.S. (C.D. 4487)	New York Shopping bags
P74/575	Ford, J. July 22, 1974	Westinghouse Electric Corp.	69/7707, etc.	Item 684.70 13%	Item 685.25 11%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	New York Earphones imported with radios
P74/576	Newman, J. July 22, 1974	A.B.C. Import & Export Co. et al.	66/76032, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P74/577	Newman, J. July 22, 1974	Fortune Star Products Co.	66/7769, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P74/578	Newman, J. July 22, 1974	Gosho Trading, Co., Inc.	67/3601, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P74/579	Newman, J. July 22, 1974	Kinoshita & Co., Ltd., U.S.A.	66/14263, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios

P74/580	Ford, J. July 23, 1974	A & A Trading Corp.	67/960, etc.	Item 684.70 15% or 13%	Item 685.22 12.5% Item 685.25 11%	Transamerican Electronics Corp. et al v. U.S. (C.D. 4405)	New York Earphones, listening devices, etc.
P74/581	Ford, J. July 23, 1974	R. J. Saunders & Co., Inc.	67/70074, etc.	Item 684.70 15% or 13% (items marked "A" and "B")	Item 685.40 11.5% or 10% (items marked "A" and "B")	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021) (items marked "A") Agreed statement of facts (items marked "B")	New York Earphones (items marked "A") Microphones (items marked "B")
P74/582	Richardson, J. July 23, 1974	W. Kay Company, Inc.	66/80424	Item 653.40 19%	Item 688.40 11.5%	Ross Products, Inc. v. U.S. (C.A.D. 994) U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111)	Chicago Bird cages with flowers and lights
P74/583	Newman, J. July 23, 1974	American Sanitary Rag Co. et al.	66/45424, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	Chicago Earphones (not head phones) of a type chiefly used with radios
P74/584	Newman, J. July 23, 1974	Arrow Trading Co. et al	69/11721, etc.	Item 684.70 13%	Item 685.25 11%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P74/585	Newman, J. July 23, 1974	Gosho Trading Co.	67/26405, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P74/586	Newman, J. July 23, 1974	C. Itoh & Co. (America), Inc.	67/25891, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHAND S
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/587	Boe, C.J. July 26, 1974	F. W. Woolworth Co.	71-10-01264	Item 706.60 20%	Item 774.60 11.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Shopping bags
P74/588	Ford, J. July 26, 1974	Marubeni Iida (America), Inc.	68/34532, etc.	Item 684.70 15%	Item 685.22 12.5%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	New York Earphones imported, and chiefly used, with radios
P74/589	Ford, J. July 26, 1974	Mercury Radio & Battery Corp. et al.	69/11965, etc.	Item 684.70 15%	Item 685.22 12.5%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	San Francisco Earphones imported, and chiefly used, with radios
P74/590	Ford, J. July 26, 1974	Mitsui & Co., Ltd., et al.	67/36270, etc.	Item 684.70 15%	Item 685.22 12.5%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	Los Angeles Earphones imported with radios
P74/591	Ford, J. July 26, 1974	New York Merchandise Co., Inc.	69/19516, etc.	Item 684.70 15%	Item 685.22 12.5%	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021)	San Diego Radio earplugs
P74/592	Ford, J. July 26, 1974	Nichimen Co., Inc., et al.	69/21842, etc.	Item 684.70 13%, 12% or 10%	Item 685.25 11%, 10% or 8.5%	Agreed statement of facts	Chicago Earphones (not headphones) of a type chiefly used with radios
P74/593	Ford, J. July 26, 1974	Sony Corporation of America	71-5-00118	Item 684.70 12% or 13%	Item 685.25 11% or 10%	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021)	New York Earphones

P74/594	Richardson, J. July 26, 1974	Import Associates of America, Inc.	68/62557	Item 651.75 Various ad valorem equivalent rates as set forth in schedule A, attached to decision and judgment, in column headed "Assessed Ad Valorem Equivalent Rate"	Item 651.75 At appropriate rates set forth in column on said schedule headed "Claimed rate"; the specific rate or specific portion of compound rate being applied once against each tool, knife, fork, spoon or other utensil in the set.	Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Flatware sets
P74/595	Maletz, J. July 26, 1974	Barnebey-Cheney Co.	64/2867, etc.	Par. 69 19%	Par. 1555 4%	Barnebey-Cheney Co. v. U.S. (C.A.D. 1110)	Baltimore Gas mask chars
P74/596	Maletz, J. July 26, 1974	Barnebey-Cheney Co.	67/84357, etc.	Item 493.26 15%	Item 793.00 4%	Barnebey-Cheney Co. v. U.S. (C.A.D. 1110)	Baltimore Gas mask chars
P74/597	Newman, J. July 26, 1974	Arrow Trading Co.	66/20111, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts.	New York Earphones (not headphones) of a type chiefly used with radios
P74/598	Newman, J. July 26, 1974	Nanasi C., Inc.	66/14228, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P74/599	Newman, J. July 26, 1974	RCA Corporation	72-5-01083, etc.	Item 684.70 10%	Item 685.25 8.5%	Judgment on the pleadings	Los Angeles/Long Beach Earphones (not headphones)

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/600	Re, J. July 26, 1974	A & P Import Co. et al.	68/23897, etc.	Item 772.15 17%, 15%, 13½% or 11.5%	Item 772.35 12.5%, 11%, 10% or 8.5%	Venetianaire Corp. of America v. US. (C.A.D. 1084)	New York Plastic mattress and pillow covers and protectors
P74/601	Newman, J. August 1, 1974	Airco Speer Div. Airco, Inc.	71-10-01485, etc.	Item 686.10 8.5%, 7% or 6% without allowance under item 807.00	Items 686.10/807.00 8.5%, 7% or 6% with cost or value of tin-plated copper lead wire, which equals the proportionate amounts of the figures shown on table (attached to decision and judgment) deductible from full value of imported resistors	Agreed statement of facts	New York American goods returned tin-plated copper lead wire incorporated into resistors
P74/602	Ford, J. August 8, 1974	A & A Trading Corp.	66/7554, etc.	Item 684.70 15%	Item 685.22 12.5%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405).	New York Earphones, listening devices, etc.
P74/603	Ford, J. August 8, 1974	A & A Trading Corp.	66/47769	Item 684.70 15% (items marked "A")	Item 685.22 12.5% (items marked "A")	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405) (items marked "A")	New York Earphones (items marked "A" and "B")

P74/603	Ford, J. August 8, 1974	A & A Trading Corp.	66/47769	Item 684.70 15% (items marked "A") Par. 353 15% (items marked "B")	Item 685.22 12.5% (items marked "A") Par 353 12½% (items marked "B")	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405) (items marked "A") Motorola, Inc., et al. v. U.S. (Abs. 69019) (items marked "B")	New York Earphones (items marked "A" and "B")
P74/604	Ford, J. August 8, 1974	Imperial International Corp. et al.	68/67932, etc.	Item 684.70 13%	Item 685.25 11%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	New York Earphones imported with radios
P74/605	Ford, J. August 8, 1974	Lucky International Co. et al.	66/35568, etc.	Item 684.70 15% (items marked "A") Item 706.08 or 791.65 20% (items marked "C"	Item 685.22 12.5% (items marked "A" and "C")	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021) (items marked "A") Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977) (items marked "C")	New York Earphones (items marked "A") Cases for transistor radios (entireties with radios) (items marked "C")
P74/606	Richardson, J. August 8, 1974	Import Associates of America, Inc.	69/6924, etc.	Item 651.75 Various ad valorem equivalent rates as set forth in schedule A, attached to decision and judgment, in column headed "Assessed Ad Valorem Equivalent Rate"	Item 651.75 At appropriate rates set forth in column on said schedule headed "Claimed Rate"; the specific rate or specific portion of the compound rate being applied once against each tool, knife, fork, spoon or other utensil in the set	Import Associates of America et al. v. U.S. (C.A.D. 961)	Chicago Flatware sets

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				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/607	Newman, J. August 8, 1974	Fedtro, Inc.	69/795	Item 683.30 13¾%	Item 678.50 10%	Judgment on the pleadings J. Gerber & Co., Inc., v. U.S. (C.D. 4101)	New York Automobile vacuum cleaners
P74/608	Watson, J. August 20, 1974	Joseph Markovits, Inc.	71-6-00303	Item 748.20 28%, 26.5%, 25% or 23.5%	Item 774.60 17%, 15%, 13.5% or 11.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York; Seattle; Los Angeles. Artificial flowers, etc.
P74/609	Watson, J. August 20, 1974	Montcalm Products Corp.	71-6-00305	Item 748.20 28%, 26.5%, 25% or 23.5%	Item 774.60 17%, 15%, 13.5% or 11.5%	Armbee Corporation et al. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York; San Francisco Artificial flowers, etc.
P74/610	Watson, J. August 20, 1974	Montcalm Products Corp.	71-10-01517	Item 748.20 26.5%	Item 774.60 15%	Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York; San Francisco Artificial flowers, etc.

P74/611	Watson, J. August 20, 1974	North American Philips Co., Inc.	62/14488	Par. 397 19%	Par. 353 13¾%	R. J. Saunders & Co., Inc. v. U.S. (C.D. 4387)	San Francisco/Oakland Shaver cases
P74/612	Watson, J. August 20, 1974	North American Philips Co., Inc.	63/1267, etc.	Par. 397 20%, 19% or 18%	Par. 353 13¾%	R. J. Saunders & Co., Inc. v. U.S. (C.D. 4387)	San Francisco/Oakland Shaver cases
P74/613	Watson, J. August 20, 1974	Bernard Schwartz & Co.	71-6-00304	Item 748.20 23.5%	Item 774.60 11.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial flowers, etc.
P74/614	Maletz, J. August 20, 1974	S. Stern, Henry & Co.	66/40599, etc.	Pars. 1309, 1532-(b), 1529(a), or 915 Various rates	Par. 1821(a) Free of duty	Agreed statement of facts	New York Samples (value of each not exceeding $1) to be used in U.S. only for soliciting orders for foreign products.
P74/615	Newman, J. August 20, 1974	Britannic & European Auto Products et al.	69/480, etc.	Item 653.39 19% (items marked "A" and "B")	Item 683.35 8.5%, 7.5% or 6.5% (items marked "A") Item 685.70 8.5%, 7.5% or 6.5% (items marked "B")	Agreed statement of facts (items marked "A" and "B")	New York Electric lighting equipment designed for motor vehicles, or parts thereof (items marked "A") Electric visual signalling apparatus, or parts thereof (items marked "B")

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/616	Maletz, J. August 21, 1974	L. M. Cox Manufacturing Co. et al.	68/24783, etc.	Item 737.90 35%, 31%, 28%, 24%	Item 734.20 11%, 10%, 9%, 8% or 7%	Agreed statement of facts	Los Angeles Driver's heads, wheel assemblies, chassis, axle and pivot arm assemblies for model road race cars
P74/617	Newman, J. August 21, 1974	Avins Industrial Products Corp.	72-5-00098	Item 685.90 10%	Item 685.25 7%	Judgment on the pleadings	New York Radio antenna plugs, part #1200
P74/618	Newman, J. August 21, 1974	Gosho Trading Co., Inc.	66/21837, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P74/619	Newman, J. August 21, 1974	Hurricane Import Co.	68/34402, etc.	Par. 409 25½% or 22½% (items marked "A" and "B")	Par. 412 17% (items marked "A") Par. 412 10½% (items marked "B")	Hurricane Import Co. et al. v. U.S. (C.D. 4173) (items marked "A") Agreed statement of facts (items marked "B")	San Francisco Partly finished rattan chair frames (items marked "A") Partly finished rattan sofas and sectionals (items marked "B")
P74/620	Newman, J. August 21, 1974	National Silver Company	71-6-00299	Item 533.75 54% plus 9¢ per doz.	Item 533.71 40%	Judgment on the pleadings U.S. v. National Silver Co. (C.A.D. 1040)	New Bedford (Boston) Art. No. R6083, Viceroy porcelainware mug assortment

P74/621	Newman, J. August 21, 1974	J. T. Steeb & Co., Inc.	68/11529	Item 652.35 or 657.20 19% or 17%	Item 652.18 12.5%	Judgment on the pleadings Kelco, Incorporated, et al. v. U.S. (C.D. 3931)	Portland, Oreg. Conveyor chain chiefly used for transmission of power
P74/622	Boe, C.J. August 22, 1974	E. Mishan & Sons et al.	73-1-00294, etc.	Item 706.60 20%	Item 774.60 17%, 11.5%, 10% and 8.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Plastic bags in various sizes, having wide openings and handles with no closure on top
P74/623	Landis, J. August 22, 1974	Hoesch America, Inc.	72-8-01872	Item 609.84 6.5%	Item 609.80 0.1¢ per lb.	Agreed statement of facts	Los Angeles Hot rolled steel sections
P74/624	Landis, J. August 22, 1974	Warshawsky & Company et al.	69/36668, etc.	Item 653.39 19%	Item 683.65 6.5%	Warshawsky & Company v. U.S. (C.D. 4410)	Chicago Lights
P74/625	Watson, J. August 22, 1974	M. Adler's Son, Inc.	71-10-01246	Item 748.20 23.5% or 22%	Item 774.60 11.5% or 10%	Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial flowers, etc.
P74/626	Watson, J. August 22, 1974	First American Artificial Flowers, Inc.	73-1-00143	Item 748.20 21%	Item 774.60 8.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial flowers, etc.

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				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/627	Watson, J. August 22, 1974	Reliance Trading Corp.	72-8-01772	Item 748.20 23.5%	Item 774.60 11.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Artificial flowers, etc.
P74/628	Watson, J. August 22, 1974	Ribbon Narrow World Wide, Inc.	68/13713, etc.	Item 748.20 28% (items marked "A" and "B")	Item 774.60 17% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	New York Artificial flowers, etc. (items marked "A" and "B")

P74/629	Newman, J. August 22, 1974	The Firestone Tire & Rubber Company	72-5-01060 and 72-9-01969 [C.D. 4474, reh. gr. C.R.D. 74-3]	Item 774.60 13.5% on entire value of rubber coated domes; no separate finding made of value of further processing performed in Canada	Item 806.30 13.5% (item 774.60) on value of further process ing outside U.S.; value of of said processing $1.67 for each "top dome", and $0.91 for each "bottom dome"	Agreed statement of facts	Champlain-Rouses Point (Ogdensburg) American goods returned (stainless steel domes for Premix soda syrup containers)
P74/630	Newman, J. August 22, 1974	E. Mishan & Sons et al.	67/13998, etc.	Item 084.70 15%	Item 085.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P74/631	Re, J. August 22, 1974	C. Itoh & Co. et al.	67/74261, etc.	Item 727.40 17½, 15% or 13.5%	Item 202.53 5%, 4% or 3%	Pacific Hardwood Sales Co. et al. v. U.S. (C.D. 3960)	Portland, Oreg. Drawer sides and backs or lumber
P74/632	Landis, J. August 28, 1974	J. Gerber & Co., Inc	69/45866	Item 610.80 15.5%	Item 608.25 8.5%	Judgment on the pleadings J. Gerber & Co., Inc., et al. v. U.S. (C.D. 3773, aff'd C.A.D. 1013)	Jacksonville Steel forgings

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				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/633	Watson, J. August 28, 1974	S. Berger Import & Mfg. Corp.	71-12-01936	Item 748.20 23.5% or 22% (items marked "B" and "C")	Item 774.60 11.5% or 10% (items marked "B" and "C")	Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) (items marked "C")	New York Ferns, in c.v. of plastic (items marked "B") Fern clusters, in c.v. of plastic (items marked "C")
P74/634	Watson, J. August 28, 1974	Robert Bosch Corp.	68/23548	Item 685.90 17.5%	Item 683.60 8.5%	Judgment on the pleadings Robert Bosch Corp. et al v. U.S. (C.D. 3881)	San Francisco Starter solenoid switches
P74/635	Watson, J. August 28, 1974	James A. Cole, Inc.	71-10-01281	Item 748.20 25%	Item 774.60 13.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Artificial flowers, etc.
P74/636	Watson, J. August 28, 1974	First American Artificial Flowers, Inc.	72-2-00406	Item 748.20 26.5%	Item 774.60 15%	Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	San Francisco Artificial flowers, etc.

P74/637	Watson, J. August 28, 1974	New York Merchandise Co., Inc.	68/54945, etc.	Item 748.20 26.5% (items marked "A" and "B")	Item 774.60 15% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	San Diego Merchandise in c.v. of plastic (items marked "A" and "B")
P74/638	Newman, J. August 28, 1974	Andre & Co., Inc.	73-10-02990	Item 653.39 19% (items marked "A" and "B")	Item 686.80 4% on basis of export value; said value is $0.12 each, net packed (bulbs marked "A") Item 653.39 19% on basis of export value; said value is appraised value less $0.12 each, net packed (lamps marked "A") Item 772.15 8.5% (items marked "B")	Mobilite, Inc. v. U.S. (C.D. 4478) (items marked "A") Agreed statement of facts (items marked "B")	Chicago Lamps, Model U-370-A—high-intensity lamps and bulbs, imported together, dutiable separately (items marked "A") Lamps, Models BC-3, RA-4 and RA-5—lamps in c.v. of plastic, chiefly used in household (items marked "B")
R74/639	Newman, J. August 28, 1974	Robert Bosch Corp. and Arthur J. Fritz & Co.	68/47045	Item 682.30 12.5%	Item 692.27 8.5%	Judgment on the pleadings	San Francisco Wiper motors
R74/640	Newman, J. August 28, 1974	Robert Bosch Corp. and Arthur J. Fritz & Co.	68/49709	Item 682.30 12.5%	Item 692.27 8.5%	Judgment on the pleadings	San Francisco Wiper motors

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				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/641	Newman, J. August 28, 1974	Robert Bosch Corp. and Arthur J. Fritz & Co.	70/47148	Item 682.30 12.5%	Item 692.27 8.5%	Judgment on the pleadings	San Francisco Wiper motors
P74/642	Newman, J. August 28, 1974	Casavant Freres, Ltd.	72-6-01449	Item 737.90 17.5%	Item 207.00 8%	Agreed statement of facts	Champlain-Rouses Point (Ogdensburg) Letters and numerals of wood, not chiefly used for amusement of children or adults
P74/643	Newman, J. August 28, 1974	Fuel Injection Sales & Service, Inc.	68/15764	Item 660.94 10%	Item 660.92 6%	Korody-Colyer Corp. v. U.S. (C.D. 4212)	New York Nozzles for fuel injection pumps.
P74/644	Newman, J. August 28, 1974	Hurricane Import Co.	64/1434, etc.	Par. 409 25½% (items marked "A" and "B")	Par. 412 17% (items marked "A") Par. 412 10½% (items marked "B")	Hurricane Import Co. et al. v. U.S. (C.D. 4173) (items marked "A"). Agreed statement of facts (items marked "B")	Honolulu Partly finished rattan chair frames (items marked "A") Partly finished rattan sofas and sectionals (items marked "B")

P74/645	Newman J. August 28, 1974	Republic Transistor Corp. et al.	66/77608, etc.	Item 766.08 or 791.65 20% (items marked "A" Item 684.70 15% (items marked "B")	Item 685.22 12.5% (items marked "A" and "B")	Agreed statement of facts (items marked "A" and "B")	New York Cases imported with and used as containers for radios with which imported (items marked "A") Earphones imported with and chiefly used as parts of radio reception apparatus (items marked "B")
P74/646	Newman, J. August 28, 1974	Daniel F. Young, Inc.	67/18864	Item 366.30 40%	Item 387.30 13.5%	Summary judgment, Hedaya Bros. v. U.S. (C.D. 3888)	New York 100% linen towels, Jadwiga 16½"x29" FS-plain
P74/647	Re, J. August 28, 1974	Victor B. Handal & Bros., Inc.	69/35443	Item 772.15 17%	Item 772.35 10%	Venetianaire Corp. of America v. U.S. (C.A.D. 1084)	Los Angeles Mattress and pillow covers
P74/648	Re, J. August 28, 1974	C. Tennant Sons & Co.	68/40449, etc.	Item 772.15 15%, 13.5% or 11%	Item 772.35 11%, 10% or 8.5%	Venetianaire Corp. of America v. U.S. (C.A.D. 1084)	New York Plastic mattress covers, pillow covers, protectors
P74/649	Boe, C.J. September 5, 1974	Amco Custom Brokerage Co. et al.	73-2-00362, etc.	Item 706.60 20%	Item 774.60 11.5%, 10% and 8.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	Philadelphia Plastic bags in various sizes, having wide openings and handles with no closure on top

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/650	Boe, C.J. September 5, 1974	Amity Fabrics, Inc.	64/21452-S	Par. 904 17¼%	Par. 907 11%	Rohner, Gehrig & Co. et al. v. U.S. (C.D. 4030)	New York Waterproof cotton cloth ("Meteor" or "Vellutina")
P74/651	Boe, C.J. September 5, 1974	Dan Dee Imports, Inc.	72-4-00923	Item 706.60 20%	Item 774.60 10%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Plastic articles
P74/652	Boe, C.J. September 5, 1974	Gimbel Brothers, Inc.	72-2-00456	Item 706.60 20%	Item 774.60 11.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Shopping bags
P74/653	Boe, C.J. September 5, 1974	S. S. Kresge Co. et al.	72-5-01098, etc.	Item 706.60 20%	Item 774.60 11.5% or 10%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	Longview (Portland, Oreg.) Shopping bags
P74/654	Boe, C.J. September 5, 1974	S. S. Kresge Company	73-6-01432	Item 706.60 20%	Item 774.60 10%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	Savannah Shopping bags
P74/655	Boe, C.J. September 5, 1974	Dora May Company, Inc.	71-11-01827, etc.	Item 706.60 20%	Item 774.60 11.5%, 10% and 8.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Shopping bags

P74/656	Newman, J. September 9, 1974	Airco Speer Div. Airco, Inc.	73–10–02843 and 73–12–03559	Item 686.10 6% without allowance under item 807.00	Items 686.10/807.00 6%; cost or value of the tin-plated copper lead wire, which equals the proportionate amounts of the figures shown on the table, attached to decision and and judgment, deductible from the full value of imported resistors	Agreed statement of facts	Pittsburgh (Philadelphia) American goods returned (resistors)
P74/657	Ford, J. September 10, 1974	Dejur Amsco Corporation et al.	67/29313, etc.	Item 684.70 15% (items marked "A" and "B")	Item 685.40 11.5% (items marked "A" and "B")	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021) (items marked "A" and "B")	New York Earphones (items marked "A" and "B")

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/658	Ford, J. September 10, 1974	Excel Corp. of America et al.	61/7990, etc.	Par.353 15%	Par. 353 13¾%, 12½% or 11½%	Midland International Corporation v. U.S. (C.D. 3217) North American Foreign Trading Corp. v. U.S. (C.D. 3068)	New York Earphones
P74/659	Ford, J. September 10, 1974	S. S. Kresge Co.	71-12-02073	Item 706.60 20%	Item 774.60 11.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	Longview (Portland Oreg.) Shopping bags
P74/660	Ford, J. September 10, 1974	Topp Import & Export, Inc.	68/26836, etc.	Item 684.70 15% or 13%	Item 685.22 12.5% Item 685.25 11%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	New York Earphones, listening devices, etc.
P74/661	Ford, J. September 10, 1974	Valiant Radio Corp.	66/67688, etc.	Item 684.70 15%	Item 685.22 12.5%	General Electric Company v. U.S. (C.D. 3887, aff'd, C.A.D. 1021)	New York Earphones
P74/662	Richardson, J. September 10, 1974	Irwin Brown Company	70/3933	Item 685.10 10%	Item 800.00 Duty free	Agreed statement of facts	New Orleans American goods returned (one underwater T.V. camera and monitor and one reel of coaxial T.V. cable)

P74/663	Richardson, J. September 10, 1974	Stanley Roberts, Inc.	65/12858	Item 927.54 60%	Item 650.07 22.5%	U.S. v. Charberjoy Distributors, Inc. (C.A.D. 1068)	New York Spoons and ladles under 25¢ ea. and not over 10.2" in overall length with handles in part plastic and in part stainless steel
P74/664	Newman, J. September 10, 1974	General Instrument Corporation	72-6-01424, etc.	Item 685.20 8% without allowance under item 807.00	Item 685.20/807.00 8%; cost or value of U.S. components (copperfoil, plastic-adhesive tape, and adhesive backed paper tape) deductible from full value of imported color delay lines	Agreed statement of facts	New York American goods returned (color delay lines)
P74/665	Newman, J. September 10, 1974	Hurricane Import Co.	68/34399, etc.	Par. 409 25½% (items marked "A" and "B")	Par. 412 17% (items marked "A") Par. 412 10½% (items marked "B")	Hurricane Import Co. et al. v. U.S. (C.D. 4173) (items marked "A") Agreed statement of facts (items marked "B")	San Francisco Partly finished rattan chair frames (items marked "A") Partly finished rattan sofas and sectionals requiring an addition of seats or backs (items marked "B")
P74/666	Re, J. September 10, 1974	Lorie Imports, Inc., et al.	69/22209, etc.	Item 772.15 17% or 15% Item 774.60 15%	Item 772.35 12.5% or 11%	Venetianaire Corp. of America v. U.S. (C.A.D. 1084)	Los Angeles Plastic covers of mattresses and pillows

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/667	Ford, J. September 11, 1974	Eisenberg & Co. USA Agency. Inc.	67/56469, etc.	Item 684.70 15% or 13%	Item 685.22 12.5% Item 685.25 11%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	New York Earphones, listening devices, etc.
P74/668	Ford, J. September 11, 1974	Mohegan International Corp.	66/20908	Par. 1531/1559(a) 20%	Radio cases dutiable as entireties with radios with which imported; no appraised value found for entirety; appraisement and liquidation void; protest premature and dismissed; entries returned to appropriate customs official for action not inconsistent with decision	Judgment on the pleadings Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977)	New York Leather cases imported with radios (entireties)

P74/669	Ford, J. September 11, 1974	Mohegan International Corp.	66/21254	Par. 1531/1559(a) 20%	Radio cases dutiable as entireties with radios with which imported; no appraised value found for entirety; appraisement and liquidation void; protest premature and dismissed; entries returned to appropriate customs officers for action not inconsistent with decision	Judgment on the pleadings Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977)	New York Leather cases imported with radios (entireties)
P74/670	Ford, J. September 11, 1974	Mohegan International Corp.	66/26780	Par. 1531/1559(a) 20%	Radio cases dutiable as entireties with radios with which imported; no appraised value found for entirety; appraisement and liquidation void; protest premature and dismissed; entry papers returned to appropriate customs officers for action not inconsistent with decision	Judgment on the pleadings Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977)	New York Leather cases imported with radios (entireties)

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/671	Ford, J. September 11, 1974	Mohegan International Corp.	66/26783	Par. 1531/1559(a) 20%	Radio cases dutiable as entireties with radios with which imported; no appraised value found for entirety; appraisement and liquidation void; protest premature and dismissed; entries returned to appropriate customs officers for action not inconsistent with decision	Judgment on the pleadings Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977)	New York Leather cases imported with radios (entireties)
P74/672	Ford, J. September 11, 1974	Mohegan International Corp.	66/26789	Par. 1531/1559(a) 20%	Radio cases dutiable as entireties with radios with which imported; no appraised value found for entirety; appraise-	Judgment on the pleadings Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977)	New York Leather cases imported with radios (entireties)

					ment and liquidation void; protest premature and dismissed; entries returned to appropriate customs officers for action not inconsistent with decision		
P74/673	Ford, J. September 11, 1974	Mohegan International Corp.	66/28907	Par. 1531/1559(a) 20%	Radio cases dutiable as entireties with radios with which imported; no appraised value found for entirety; appraisement and liquidation void; protest premature and dismissed; entries returned to appropriate customs officers for action not inconsistent with decision	Judgment on the pleadings Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977)	New York Leather cases imported with radios (entireties)

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/674	Richardson, J. September 11, 1974	Baylis Brothers Co.	72-5-01004	Item 382.04 42.5% Item 382.00 30%	Item 807.00 Dutiable upon full value of imported article (smocked dress fronts) less cost or value of American components (fabric pieces of dress fronts) Dutiable values of smocked dress fronts are entered values less values for fabricated components of U.S. assembled abroad into the dress fronts as such values are set forth on the invoices under heading "Value of Material and Thread", plus 15¢ per doz. dress fronts	U.S. v. The Baylis Brothers Co. (C.A.D. 1026)	San Juan American goods returned (smocked dress fronts)
P74/675	Richardson, J. September 11	Baylis Brothers Co	72-6-01443	Item 382.04	Item 807.00	U.S. v. The Baylis Brothers	

					plus 15¢ per doz. dress fronts		
P74/675	Richardson, J. September 11, 1974	Baylis Brothers Co	72-6-01443	Item 382.04 42.5% Item 382.00 36%	Item 807.00 Dutiable upon full value of imported article (smocked dress fronts) less cost or value of American components (fabric pieces of dress fronts) Dutiable values of smocked dress fronts are entered values less values for fabricated components of U.S. assembled abroad into the dress fronts as such values are set forth on the invoices under heading "Value of Material and Thread", plus 15¢ per doz. dress fronts	U.S. v. The Baylis Brothers Co. (C.A.D. 1026)	San Juan American goods returned (smocked dress fronts)

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DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/676	Richardson, J. September 11, 1974	F. W. Myers & Co., Inc., et al.	66/30636, etc.	Item 692.35 11.5%, 10%, 9% or 8%	Item 692.30 Free of duty	U.S. v. F. W. Myers & Co., Inc. (C.A.D. 1097)	St. Albans Tractors and parts
P74/677	Watson, J. September 12, 1974	F.T.V. Corporation	71-6-00290	Item 748.20 25% or 23.5% (items marked "A" and "B")	Item 774.60 13.5% or 11.5% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	Laredo Merchandise in c.v. of plastic (items marked "A" and "B")
P74/678	Watson, J. September 12, 1974	Good Art, Inc.	67/6227, etc.	Item 748.20 28% or 26.5% (items marked "A" and "B")	Item 774.60 17% or 15% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185); Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	Los Angeles Artificial flowers, etc. (items marked "A" and "B")
P74/679	Watson, J. September 12, 1974	Union Novelty Co., Inc.	67/10542-S, etc.	Item 748.20 28%	Item 774.60 17%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial ferns, etc.

P74/680	Watson, J. September 12, 1974	Van Wood & Co.	69/46503, etc.	Item 748.20 28%, 25% and 23.5% (items marked "A" and "B")	Item 774.60 17%, 13.5% or 11.5% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185); Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	Los Angeles Artificial flowers, etc. (items marked "A" and "B")
P74/681	Landis, J. September 16, 1974	Asiatic Petroleum Corp.	67/84411	Par. 1558 10%	Par. 1733 Free of duty	Asiatic Petroleum Corp. v. U.S. (C.A.D. 1029)	Baltimore Shell Alexia Oil A
P74/682	Watson, J. September 16, 1974	G. R. Bolton, Inc.	68/27986, etc.	Item 748.20 28%, 26.5% and 25% (items marked "A" and "B")	Item 774.60 17%, 15% or 13.5% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185); Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	Los Angeles Artificial flowers, etc. (items marked "A" and "B")
P74/683	Watson, J. September 16, 1974	C. M. Import & Export Corp. et al.	64/25530, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	San Francisco Earphones (not headphones) of a type chiefly used with radios

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/084	Watson, J. September 16, 1974	John S. Connor, Inc., et al.	68/26223, etc.	Item 748.20 28% (items marked "A" and "B")	Item 774.60 17% (items marked "A") Item 772.97 17% (items marked "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279); First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) (items marked "A") International Artware Corporation et al. v. U.S. (C.D. 4184) (items marked "B")	Baltimore Artificial flowers, etc. (items marked "A") Mistletoe and holly floral arrangements (items marked "B")
P74/085	Watson, J. September 16, 1974	Reliance Trading Corp. of America	73-1-00335	Item 748.20 22% or 21%	Item 774.60 10% or 8.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York; Los Angeles Artificial flowers, etc.
P74/086	Watson, J. September 16, 1974	Reliance Trading Corp. of America	73-2-00490	Item 748.20 22%	Item 774.60 10%	Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Artificial flowers, etc.

P74/687	Watson, J. September 16, 1974	Sol Spitz Co., Inc.	67/40510, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunoid Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial flowers, etc.
P74/688	Watson, J. September 16, 1974	Sol Spitz Co., Inc.	69/32432, etc.	Item 748.20 25% or 23.5%	Item 774.60 13.5% or 11.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunoid Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396).	New York Artificial flowers, etc.
P74/689	Ford, J. September 17, 1974	Dejur Amsco Corp.	66/72315, etc.	Item 684.70 15% (items marked "A" and "B")	Item 685.40 11.5% (items marked "A" and "B")	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021) (items marked "A" and "B")	New York Earphones (items marked "A") Extensions (parts of earphones) (items marked "B")
P74/690	Ford, J. September 17, 1974	Lloyds Electronics Intl., Inc.	68/62777, etc.	Item 684.70 15% or 13%	Item 685.22 or 685.25 12.5% or 11%	U.S. v. General Electric Company (C.A.D. 1021)	New York Earphones
P74/691	Ford, J. September 17, 1974	Nichimen Company, Inc.	67/40051, etc.	Item 684.70 15%	Item 685.22 12.5%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	Chicago Earphones imported with radios

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/092	Ford, J. September 17, 1974	Sony Corporation et al.	67/35794, etc.	Item 684.70 15% (items marked "A") Item 706.08 or 706.60 20% (items marked "B") Item 685.90 17.5% (items marked "C")	Item 685.22 12.5% (items marked "A", "B" and "C")	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021) (items marked "A" and "C") Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977) (items marked "B")	New York Earphones (items marked "A") Cases for transistor radios (entireties with radios) (items marked "B") Jacks (items marked "C")
P74/093	Watson, J. September 17, 1974	Anita Investment Company	72-8-01762, etc.	Item 748.20 22%	Item 774.60 10%	First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Artificial flowers, etc.
P74/094	Watson, J. September 17, 1974	Belridge Oil Company	72-8-01744	Item 682.60 12% (as an entirety)	Item 660.46 9% on basis of export value; said value is $71,500, net packed (one gas turbine)	Agreed statement of facts	Los Angeles One gas turbine; one gear box (not entireties)

					Item 680.45 8% on basis of export value; said value is $15,000, net packed (one gear box)		
P74/695	Watson, J. September 17, 1974	S. Berger Imports & Mfg. Corp.	69/5869–S, etc.	Item 748.20 26.5% and 25%	Item 774.60 15% and 13.5%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial ferns, etc.
P74/696	Watson, J. September 17, 1974	D. B. Morrow, Inc., et al.	67/82981–A, etc.	Item 748.20 28%, 26.5% or 25% (items marked "A" or "B")	Item 774.60 17%, 15% or 13.5% (items marked "A" or "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185); Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	Los Angeles Artificial flowers, etc. (items marked "A" and "B")
P74/697	Watson, J. September 17, 1974	Sol Spitz Co., Inc.	68/1633, etc.	Item 748.20 28%, 26.5% or 25%	Item 774.60 17%, 15% or 13.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial flowers, etc.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/698	Watson, J. September 17, 1974	Standard Brands Paint Co., Inc.	72-1-00245	Item 748.20 23.5% or 22%	Item 774.60 11.5% or 10%	First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Artificial flowers, etc.
P74/699	Watson, J. September 17, 1974	Union Novelty Co., Inc.	70/44172, etc.	Item 748.20 23.5%	Item 774.60 11.5%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial ferns, etc.
P74/700	Re, J. September 17, 1974	J. T. Steeb & Co.	68/11533, etc.	Item 727.40 17%, 15%, 13.5% or 11.5%	Item 202.53 5%, 4%, 3% or 2%	Pacific Hardwood Sales Co. et al. v. U.S. (C.D. 3060)	Longview (Portland, Oreg.) Drawer sides and backs or lumber
P74/701	Watson, J. September 18, 1974	Artiflor Mfg. Co., Inc., et al.	69/19448, etc.	Item 748.20 28% and 26.5%	Item 774.60 17% and 15%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial ferns, etc.
P74/702	Watson, J. September 18, 1974	S. Berger Imports & Mfg. Corp.	69/34073, etc.	Item 748.20 26.5% and 25%	Item 774.60 15% and 13.5%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial ferns, etc.
P74/703	Watson, J. September 18, 1974	M. E. Duncan Co., Inc.	69/50707, etc.	Item 748.20 28%, 26.5% and 23.5% (items marked "A" and "B")	Item 774.60 17%, 15% or 11.5% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185); Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	Los Angeles Artificial flowers, etc. (items marked "A" and "B")

P74/704	Watson, J. September 18, 1974	Pier I Imports, Inc., et al.	70/30980, etc.	Item 748.20 28%, 26.5% or 25% (items marked "A" and "B")	Item 774.60 17%, 15% or 13.5% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185); Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	Los Angeles Artificial flowers, etc. (items marked "A" and "B")
P74/705	Re, J. September 18, 1974	Shirokiya, Inc., et al.	71-11-01741, etc.	Item 206.67 32% and 28%	Item 765.03 Duty free	Sanji Kobata et al. v. U.S. (C.D. 4213)	Honolulu Painted paper screens
P74/706	Boe, C. J. September 19, 1974	Adolco Trading Co.	74-4-00949	Item 706.60 20%	Item 774.60 10% or 8.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Plastic shopping bags
P74/707	Boe, C. J. September 19, 1974	Arbor Import Corp. et al.	73-5-01307	Item 706.60 20%	Item 774.60 13.5% 10% and 8.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Plastic bags in various sizes, having wide openings and handles with no closure on top
P74/708	Ford, J. September 19, 1974	Imperial International Corp.	67/16984, etc.	Item 684.70 15%	Item 685.22 12.5%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	New York Earphones imported with radios
P74/709	Ford, J. September 19, 1974	Imperial International Corp. et al.	68/14650, etc.	Item 684.70 15%	Item 685.22 12.5%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	New York Earphones imported with radios
P74/710	Ford, J. September 19, 1974	Ross Electronics Corp.	70/30482, etc.	Item 684.70 12%	Item 685.25 10%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	Chicago Earphones

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/711	Richardson, J. September 19, 1974	Casady Engineering Associates	72-10-02195	Item 657.20 17%	Item 678.50 9%	Agreed statement of facts	Los Angeles "Tokyo-Fuji hand labeler"
P74/712	Richardson, J. September 19, 1974	Ross Products, Inc., et al.	66/13735, etc.	Item 653.40 19%	Item 688.40 11.5%	Ross Products, Inc. v. U.S. (C.A.D. 994) U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111)	New York Electric bird cages, etc.
P74/713	Watson, J. September 19, 1974	S. Berger Imports & Mfg. Corp.	70/16187-S, etc.	Item 748.20 26.5%, 25% and 23.5%	Item 774.60 15%, 13.5% and 11.5%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial ferns, etc.
P74/714	Watson, J. September 19, 1974	S. Berger Imports & Mfg. Corp.	70/43805, etc.	Item 748.20 26.5%, 25% and 23.5%	Item 774.60 15%, 13.5% and 11.5%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial ferns, etc.

P74/715	Watson, J. September 19, 1974	I.T.T. Export Corp. et al.	66/12302, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P74/716	Watson, J. September 19, 1974	Ribbon Narrow World Wide, Inc.	67/90583, etc.	Item 748.20 28% (items marked "A" and "B")	Item 774.60 17% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation v. U.S. (C.D. 3279) (items marked "A") Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	New York Artificial flowers, etc. (items marked "A" and "B")
P74/717	Watson, J. September 19, 1974	Star Sales of Dallas	72-8-01747, etc.	Item 748.20 26.5%, 23.5% and 22%	Item 774.60 15%, 11.5% or 10%	First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Artificial flowers, etc.
P74/718	Watson, J. September 19, 1974	Union Novelty Co., Inc.	68/1891–S, etc.	Item 748.20 28% and 26.5%	Item 774.60 17% and 15%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial ferns, etc.
P74/719	Richardson, J. September 23, 1974	New York Merchandise Co., Inc., et al.	66/9263, etc.	Item 653.40 19%	Item 688.40 11.5%	Ross Products, Inc. v. U.S. (C.A.D. 994) U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111)	New York Electric bird cages, etc.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/720	Richardson, J. September 23, 1974	Ross Products, Inc., et al.	66/54560, etc.	Item 653.40 19%	Item 688.40 11.5%	Ross Products, Inc. v. U.S. (C.A.D. 994) U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111)	New York Electric bird cages, etc.
P74/721	Watson, J. September 23, 1974	Gosho Trading Co., Inc.	68/4908, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P74/722	Watson, J. September 23, 1974	Progress Lighting Div. of L.C.A. Corporation	72-6-01350, etc.	Item 653.39 19%	Item 687.30 5.5% or 5% on basis of export value; said value is 23¢, each, packed (bulbs) Item 653.39 19% on basis of export value; said value is appraised value for fluorescent lamps plus bulbs, less 23¢, each, packed (fluorescent lamps)	Mobilite, Inc. v. U.S. (C.R.D. 73-11)	Philadelphia Fluorescent lamps with bulbs (not entireties)

P74/723	Watson, J. September 23, 1974	Union Novelty Co., Inc.	69/14395-S, etc.	Item 748.20 28%, 26.5% and 25%	Item 774.60 17%, 15% and 13.5%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial ferns, etc.
P74/724	Maletz, J. September 23, 1974	Creative Playthings, Inc.	68/1102, etc.	Item 737.90 35%	Item 737.55 21%	Agreed statement of facts	New York Toy building blocks, bricks and shapes
P74/725	Newman, J. September 23, 1974	Seaway Importing Co.	70/19092, etc.	Item 206.97 or 207.00 16⅔% or 15%	Item 727.35 10.5% or 9%	The American Import Co. et al. v. U.S. (C.D. 3807)	Seattle Gun racks
P74/726	Boe, C.J. September 24, 1974	Bloomingdales, Div. of Fed. Dept. Stores, et al.	70/61829, etc.	Item 706.60 20%	Item 774.60 15% or 13.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Plastic shopping bags
P74/727	Boe, C.J. September 24, 1974	J.M. Fields, Inc., et al.	73-7-01689, etc.	Item 706.60 20%	Item 774.60 11.5%, 10% and 8.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Plastic bags in various sizes, having wide openings and handles with no closure on top
P74/728	Boe, C.J. September 24, 1974	Franshaw, Inc.	71-10-01572	Item 706.60 20%	Item 774.60 11.5% or 10%	Adolco Trading Co et al. v. U.S. (C.D. 4487)	New York Shopping bags
P74/729	Boe, C.J. September 24, 1974	S.S. Kresge Co.	72-12-02581, etc.	Item 706.60 20%	Item 774.60 10%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	Seattle Shopping bags
P74/730	Boe, C.J. September 24, 1974	F. W. Woolworth Co. et al.	72-6-01435, etc.	Item 706.60 20%	Item 774.60 11.5%, 10% or 8.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Shopping bags

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/731	Ford, J. September 24, 1974	Mohegan International Corp.	66/20952	Par. 1531 or 1531/1559(a) 20%	Radio cases were not but should have been appraised as entireties with radios; appraisement and liquidation void; protest premature and dismissed; entry papers returned to appropriate customs officers for action not inconsistent with decision	Judgment on the pleadings Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977)	New York Radio cases imported with radios (entireties)
P74/732	Ford, J. September 24, 1974	Mohegan International Corp.	66/20956	Par. 1531 or 1531/1559(a) 20%	Radio cases were not but should have been appraised as entireties with radios; appraisement and liquidation void; protest premature and dismissed; entry papers returned to appropriate customs officers for action not inconsistent with decision	Judgment on the pleadings Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977)	New York Radio cases imported with radios (entireties)
P74/733	Ford, J. September 24,	Montgomery Ward & Co.	67/43330, etc.	Item 684.70 15% or 13%	Item 685.40 11.5% or 10%	General Electric Company	New York

					for action not inconsistent with decision		
P74/733	Ford, J. September 24, 1974	Montgomery Ward & Co.	67/43330, etc.	Item 684.70 15% or 13%	Item 685.40 11.5% or 10%	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021)	New York Earphones
P74/734	Richardson, J. September 24, 1974	Brechner Bros. et al.	66/42684, etc.	Item 653.40 19%	Item 688.40 11.5%	Ross Products, Inc. v. U.S. (C.A.D. 994) U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111)	New York Electric bird cages, etc.
P74/735	Watson, J. September 24, 1974	Reliance Trading Corp. of America	72-5-01186	Item 748.20 25%, 23.5% or 22%	Item 774.60 13.5%, 11.5% or 10%	Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles; Chicago; New York Artificial flowers, etc.
P74/736	Watson, J. September 24, 1974	S. Shamash & Sons, Inc.	68/2846	Item 337.70 23%	Merchandise not imported should not have been assessed with duty	Agreed statement of facts	New York Shortage of 6 cartons of silk piece goods
P74/737	Newman, J. September 24, 1974	Norca Corp.	67/4610, etc.	Item 657.35 15% plus 1.275¢ per lb. (items marked "A" and "C") Item 657.20 19% or 17% (items marked "B")	Strainers and bases or plugs and stoppers separately dutiable; no separate values returned; appraisements and liquidations void; entries returned to regional commissioner for appropriate administrative action (items marked "A", "B" and "C")	The Westbrass Company v. U.S. (C.D. 4293) (items marked "A", "B" and "C")	New York Sink strainers and bases (items marked "A" and "B") Laundry tray plugs and rubber stoppers (items marked "C")

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/738	Watson, J. September 25, 1974	Bam-Bee's, Inc.	72-8-01742, etc.	Item 748.20 23.5% and 22%	Item 774.60 11.5% and 10%	First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Artificial flowers, etc.
P74/739	Watson, J. September 25, 1974	Beck Distributing Corp. et al.	68/25791, etc.	Item 653.40 or 653.39 19% (items marked "A" and "B")	Item 683.65 (items marked "A") or 685.70 (items marked "B") 8.5%, 7.5%, 6.5%, 5.5%, 5% and 4%	Agreed statement of facts (items marked "A" and "B")	New York Electric lighting equipment designed for motor vehicles (items marked "A") Electrical visual signalling apparatus or parts (items marked "B")
P74/740	Watson, J. September 25, 1974	Alex W. Block Co.	69/25357	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	Chicago Artificial flowers, etc.
P74/741	Watson, J. September 25, 1974	Kwan Yuen Co., Inc.	72-2-00363	Item 748.20 26.5%	Item 774.60 15%	First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Artificial flowers, etc.
P74/742	Watson, J. September 25, 1974	Teters Floral Products Co., Inc.	72-1-00116	Item 748.20 23.5%	Item 774.60 11.5%	First American Artificial Flowers, Inc. v. U.S. (C.D. 4185)	New Orleans Artificial flowers, etc.

						Joseph Markovits, Inc. v. U.S. (C.D. 4306)	
P74/743	Watson, J. September 25, 1974	Union Novelty Co., Inc.	67/30935-S, etc.	Item 748.20 28%	Item 774.60 17%	Joseph Markovits, Inc. v. U.S. (C.D. 4306)	New York Artificial ferns, fruits, leaves, etc.
P74/744	Watson, J. September 25, 1974	F. W. Woolworth Co.	69/32035	Item 748.20 26.5%	Item 774.60 15%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	San Francisco Artificial flowers, etc.
P74/745	Ford, J. September 26, 1974	Montgomery Ward & Co. et al.	68/10272, etc.	Item 684.70 15%	Item 685.22 12.5%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	New York Earphones imported with radios
P74/746	Richardson, J. September 26, 1974	General Instrument Corporation	70/50975, etc.	Item 685.80 12.5%, 12% or 11% without allowance under item 807.00	Item 685.80/807.00 12.5%, 12% or 11%; cost or value of U.S. components (items marked "A") deductible from full value of imported capacitors	General Instrument Corporation v. U.S. (C.A.D. 1106)	New York American goods returned (capacitors)
P74/747	Watson, J. September 26, 1974	A. A. Importing Co.	71-10-01460	Item 748.20 23.5%	Item 774.60 11.5%	Joseph Markovits, Inc. v. U.S. (C.D. 4306)	Seattle Artificial plastic ferns and bananas

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/748	Watson, J. September 26, 1974	Harry N. Bloomfield	69/32461, etc.	Duty assessed on entire quantity of wool although certain bales were reported "manifested not found"	Merchandise reported "manifested not found" not imported; duties illegally assessed; district director ordered to reliquidate entries making allowance for duty assessed on said bales of wool	Agreed statement of facts	Boston Shortage (bales of wool covered by entry Nos. 221413 and 133057)
P74/749	Watson, J. September 26, 1974	Robert Bosch Corp.	70/40096	Item 685.90 17.5%, 15.5% or 14%	Item 683.60 8.5%	Robert Bosch Corp. et al. v. U.S. (C.D. 3881)	San Francisco Solenoid switches
P74/750	Watson, J. September 26, 1974	M. B. Daniels & Co., Inc.	67/51654	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	New York Plastic flower shower curtain hooks

P74/751	Watson, J. September 26, 1974	Gerard M. Ducorday	72-1-00248	Item 748.20 26.5%	Item 774.60 15%	First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Artificial flowers, etc
P74/752	Watson, J. September 26, 1974	Mar-Lyn Imports Corp.	67/26488-S, etc.	Item 748.20 28%	Item 774.60 17%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial ferns, etc.
P74/753	Watson, J. September 26, 1974	New York Merchandise Co., Inc.	67/10060, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunoid Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	San Diego Artificial flowers, etc.
P74/754	Watson, J. September 26, 1974	Gene Shillingford & Sons, Inc.	69/27710	Item 653.39 19%	Item 683.65 7.5%	Agreed statement of facts	Philadelphia Electric lighting equipment designed for motor vehicles, or parts thereof
P74/755	Malets, J. September 26, 1974	Lep Transport, Inc.	73/3	Item 646.92 17%	Item 692.27 8.5%	Gallagher & Ascher Company v. U.S. (C.D. 3899)	Chicago Lock plugs

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
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P74/756	Ford, J. October 3, 1974	Green Giant Company	74-6-01556	Item 144.10 5¢ per lb. and 25%	Item 144.20 3.2¢ per lb. and 10%	Green Giant Co. v. U.S. (C.A.D. 1117)	Philadelphia Whole frozen mushrooms
P74/757	Ford, J. October 3, 1974	F. B. Vandegrift & Co., Inc.	65/14074, etc.	Item 706.08 20% (items marked "A") Item 684.70 15% (items marked "B")	Item 685.22 12.5% (items marked "A" and "B")	Agreed statement of facts (items marked "A") General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021) (items marked "B")	Philadelphia Cases imported with and used as containers for radios (items marked "A") Earphones (items marked "B")
P74/758	Ford, J. October 3, 1974	Young's Market Co.	74-4-01094	Item 144.10 5¢ per lb. plus 25%	Item 144.20 3.2¢ per lb. and 10%	Green Giant Co. v. U.S. (C.A.D. 1117)	Los Angeles Whole frozen mushrooms
P74/759	Richardson, J. October 3, 1974	New York Merchandise Co., Inc.	65/8700, etc.	Item 653.40 or 653.39 19%	Item 688.40 11.5% and 10%	Ross Products, Inc. v. U.S. (C.A.D. 994) U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111)	Portland, Oreg. Electric bird cages
P74/760	Richardson, J. October 3, 1974	F. B. Vandegrift & Co., Inc.	65/4607, etc.	Item 653.40 19%	Item 688.40 11.5%	U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111)	Philadelphia Bird cages
P74/761	Landis, J. October 3, 1974	Hancock Gross, Inc.	70/55377	Item 657.80 13%	Item 654.20 11.5%	Judgment on the pleadings	Philadelphia Shower heads

P74/762	Watson, J. October 3, 1974	Anita Investment Co.	67/7096, etc.	Item 748.20 28%, 26.5%, 25% or 23.5% (items marked "A" and "B")	Item 774.60 17%, 15%, 13.5% or 11.5% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et. al. v. U.S. (C.D. 3279) (items marked "A") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185); Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	Los Angeles Artificial flowers, etc. (items marked "A" and "B")
P74/763	Watson, J. October 3, 1974	S. Berger Import & Mfg. Co.	67/65513–8, etc.	Item 748.20 28%	Item 774.60 17%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Philadelphia Artificial ferns, etc.
P74/764	Watson, J. October 3, 1974	Hancock Gross, Inc.	67/88248, etc.	Item 613.18 1.275¢ lb. plus 15% or 1.1¢ lb. plus 13.5%	Item 654.00 10% or 9%	Judgment on the pleadings	Philadelphia Swivel connectors and hose unions
P74/765	Re, J. October 3, 1974	William H. Masson, Inc. Tree Products Co.	67/86114	Item 727.40 17%	Item 202.54 10%	Judgment on the pleadings Pacific Hardwood Sales Co. et al. v. U.S. (C.D. 3960)	Baltimore Drawer sides and backs
P74/766	Re, J. October 3, 1974	William H. Masson, Inc. Tree Products Co.	68/40	Item 727.40 17%	Item 202.54 10%	Judgment on the pleadings Pacific Hardwood Sales Co. et al. v. U.S. (C.D. 3960)	Baltimore Drawer sides and backs
P74/767	Re, J. October 3, 1974	William H. Masson, Inc. Tree Products Co.	68/41	Item 727.40 17%	Item 202.54 10%	Judgment on the pleadings Pacific Hardwood Sales Co. et al. v. U.S. (C.D. 3960)	Baltimore Drawer sides and backs
P74/768	Re, J. October 3, 1974	William H. Masson, Inc. Tree Products Co.	68/42	Item 727.40 17%	Item 202.54 10%	Judgment on the pleadings Pacific Hardwood Sales Co. et al. v. U.S. (C.D. 3960)	Baltimore Drawer sides and backs

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P74/769	Re, J. October 3, 1974	William H. Masson, Inc. Tree Products Co.	68/43	Item 727.40 17%	Item 202.54 10%	Judgment on the pleadings Pacific Hardwood Sales Co. et al. v. U.S. (C.D. 3960)	Baltimore Drawer sides and backs
P74/770	Re, J. October 3, 1974	William H. Masson, Inc. Tree Products Co.	68/45	Item 727.40 17%	Item 202.54 9%	Judgment on the pleadings Pacific Hardwood Sales Co. et al. v. U.S. (C.D. 3960)	Baltimore Drawer sides and backs
P74/771	Re, J. October 3, 1974	William H. Masson, Inc. Tree Products Co.	68/46	Item 727.40 17%	Item 202.54 9%	Judgment on the pleadings Pacific Hardwood Sales Co. et al. v. U.S. (C.D. 3960)	Baltimore Drawer sides and backs
P74/772	Re, J. October 3, 1974	William H. Masson, Inc. Tree Products Co.	68/47	Item 727.40 17%	Item 202.54 8%	Judgment on the pleadings Pacific Hardwood Sales Co. et al. v. U.S. (D.C. 3960)	Baltimore Drawer sides and backs
P74/773	Re, J. October 3, 1974	Venetianaire Corp. of America	67/80156	Item 772.15 17%	Item 772.35 12.5%	Venetianaire Corp. of America v. U.S. (C.A.D. 1084)	New York Plastic mattress covers, pillow covers and protectors
P74/774	Newman, J. October 7, 1974	Mobilite, Inc.	66/77641, etc.	Item 653.40 19%	Liquidations void; protests premature and dismissed; entries returned to regional commissioner for appropriate administrative action	Mobilite, Inc. v. U.S. (C.D. 4478)	New York Fluorescent and high intensity lamps and bulbs imported together (not entireties)

P74/775	Newman, J. October 7, 1974	Mobilite, Inc.	67/36610, etc.	Item 653.40 19%	Liquidations void; protests premature and dismissed; entries returned to regional commissioner for appropriate administrative action	Mobilite, Inc. v. U.S. (C.D. 4478)	New York Fluorescent and high intensity lamps and bulbs imported together (not entireties)
P74/776	Newman, J. October 7, 1974	Mobilite, Inc.	67/58490, etc.	Item 653.35 10.5% or 8%	Liquidations void; protests premature and dismissed; entries returned to regional commissioner for appropriate administrative action	Mobilite, Inc. v. U.S. (C.D. 4478)	New York High intensity lamps and bulbs imported together (not entireties)
P74/777	Newman, J. October 7, 1974	Mobilite, Inc.	68/33187, etc.	Item 653.40 or 653.39 19%	Liquidations void; protests premature and dismissed; entries returned to regional commissioner for appropriate administrative action	Mobilite, Inc. v. U.S. (C.D. 4478)	New York Fluorescent and high intensity lamps and bulbs imported together (not entireties)

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/778	Newman, J. October 7, 1974	Mobilite, Inc.	68/63218, etc.	Item 653.40 or 653.39 19%	Liquidations void; protests premature and dismissed; entries returned to regional commissioner for appropriate administrative action	Mobilite, Inc. v. U.S. (C.D. 4478)	New York Fluorescent and high intensity lamps and bulbs imported together (not entireties)
P74/779	Richardson, J. October 9, 1974	National Silver Co.	65/15912	Item 651.75 35.49%	Item 651.75 .01¢ ea. plus 12.5%	Import Associates of America et al. v. U.S. (C.A.D. 961)	Los Angeles Flatware sets
P74/780	Richardson, J. October 9, 1974	National Silver Company	70/23652	Item 651.75 26.83%	Item 651.75 .08¢ ea. plus 14%	Import Associates of America et al. v. U.S. (C.A.D. 961)	Los Angeles Cutlery sets
P74/781	Watson, J. October 9, 1974	Gambles Import Corp. et al.	68/31415, etc.	Item 748.20 28% or 26.5%	Item 774.60 17% or 15%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	San Diego Artificial flowers, etc.

P74/782	Watson, J. October 9, 1974	General Instrument Corporation	71-10-01347	Item 687.60 12.5%, 11% or 10% without allowance under item 807.00 for certain fabricated components	Items 687.60/807.00 12.5%, 11% or 10%; cost or value of fabricated components previously determined upon liquidation to be products of U.S. plus cost or value of gold wire, whisker wire, and tape in all involved entries; beaded lead assembly in all entries except 13; case assembly in all entries except 8; solder preform in all entries except 1; tin anode in all entries except 1; germanium wafer in all entries except 7; deductible from appraised value of imported gold bond diodes	Judgment on the pleadings General Instrument Corporation v. U.S. (C.A.D.'s 1062, 1106; C.D.'s 4408, 4422, 4470)	New York American goods returned (gold bond diodes)

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				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/783	Watson, J. October 9, 1974	F. W. Myers	70/51778	Item 708.82 17.5%	Item 661.35 8%	Agreed statement of facts	New York Devices used as accessories with electronic microscopes by cooling surroundings of specimen being examined, while maintaining specimen at room temperature
P74/784	Maletz, J. October 9, 1974	Florsheim Shoe Company, Div. of Interco, Inc., et al.	72-1-00147, etc.	Item 121.30 10% or 9.5%	Item 121.57 7% or 6%	Florsheim Shoe Company, Division of Interco, Inc. v. U.S. (C.D. 4495)	Chicago Buffalo calf leather
P74/785	Newman, J. October 9, 1974	Mobilite, Inc.	67/28230, etc.	Item 653.40 19%	Liquidations void; protests premature and dismissed; entries returned to regional commissioner for appropriate administrative action	Mobilite, Inc. v. U.S. (C.D. 4478)	New York Fluorescent and high intensity lamps and bulbs imported together (not entireties)
P74/786	Newman, J. October 9, 1974	Mobilite, Inc.	67/49269, etc.	Item 653.40 19%	Liquidations void; protests premature and dismissed; entries returned to	Mobilite, Inc. v. U.S. (C.D. 4478)	New York Fluorescent and high intensity lamps and bulbs imported together (not entireties)

					regional commissioner for appropriate administrative action.		
P74/787	Newman, J. October 9, 1974	Mobilite, Inc.	67/73837, etc.	Item 653.40 19%	Liquidations void; protests premature and dismissed; entries returned to regional commissioner for appropriate administrative action	Mobilite, Inc. v. U.S. (C.D. 4478)	New York Fluorescent and high intensity lamps and bulbs imported together (not entireties)
P74/788	Newman, J. October 9, 1974	Mobilite, Inc.	68/10741, etc.	Item 653.40 or 653.39 19%	Liquidations void; protests premature and dismissed; entries returned to regional commissioner for appropriate administrative action	Mobilite, Inc. v. U.S. (C.D. 4478)	New York Fluorescent and high intensity lamps and bulbs imported together (not entireties)
P74/789	Newman, J. October 9, 1974	Mobilite, Inc.	69/29789, etc.	Item 653.39 19%	Liquidations void; protests premature and dismissed; entries returned to regional commissioner for appropriate administrative action	Mobilite, Inc. v. U.S. (C.D. 4478)	New York Fluorescent and high intensity lamps and bulbs imported together (not entireties)

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/790	Newman, J. October 9, 1974	Mobilite, Inc.	70/6440, etc.	Item 653.39 19%	Liquidations void; protests premature and dismissed; entries returned to regional commissioner for appropriate administrative action	Mobilite, Inc. v. U.S. (C.D. 4478)	New York Fluorescent and high intensity lamps and bulbs imported together (not entireties)
P74/791	Ford, J. October 10, 1974	Larami Corp.	73-11-03154	Item 683.70 35%	Item 683.70 35% (flashlights) Item 682.95 8.5% (batteries) On basis of export value; said values are: $2.88 per gross, packed (batteries); appraised value for flashlights plus batteries, less $2.88 per gross, packed (flashlights)	Torch Mfg. Co., Inc. v. U.S.(C.D. 2863)	Philadelphia Flashlights with batteries; not entireties
P74/792	Ford, J. October 10, 1974	Montgomery Ward & Co.	66/60909, etc.	Item 684.70 15%, 13% or 12%	Item 685.20 9% or 8%	General Electric Company v. U. S. (C.D. 3887, aff'd C.A.D. 1021)	New York Earphones

P74/793	Richardson, J. October 10, 1974	Border Brokerage Co., Inc.	60/4648, etc.	Par. 397 19% (items marked "A" and "B")	Par. 332 0.5¢ per lb. (items marked "A") Par. 329 12.5% (items (marked "B")	Border Brokerage Company et al. v. U.S. (C.D. 2917) (items marked "A") Agreed statement of facts (items marked "B")	Blaine, (Seattle) Rivets and pins (items marked "A") "C" type links and side bars, chiefly used for transmission of power (items marked "B")
P74/794	Richardson, J. October 10, 1974	Ross Products, Inc.	64/25791, etc.	Item 653.40 19%	Item 688.40 11.5%	Ross Products, Inc. v. U.S. (C.A.D. 994) U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111)	San Juan Electric bird cages, etc.
P74/795	Watson, J. October 10, 1974	A.A. Importing, Inc., et al.	70/55979, etc.	Item 748.20 26.5%, 25% or 23.5%	Item 774.60 15%, 13.5% or 11.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunoid Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Artificial flowers, etc.
P74/796	Watson, J. October 10, 1974	The American Import Co.	69/22554, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunoid Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Philadelphia Artificial flowers, etc.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/797	Watson, J. October 10, 1974	Norman Import & Export Co., Inc.	67/6171(B), etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Artificial flowers, etc.
P74/798	Boe, C. J. October 16, 1974	Ohio Bag Corp.	73-12-03387	Item 706.60 20%	Item 774.60 8.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Plastic shopping bags
P74/799	Richardson, J. October 16, 1974	National Silver Company	67/8254	Item 651.75 23%, 27%, 27.5%, 21.0%	Item 651.75 .01¢ ea. plus 12.5%	Import Associates of America et al. v. U.S. (C.A.D. 961)	Los Angeles Flatware sets
P74/800	Richardson, J. October 16, 1974	Ross Products, Inc.	64/23443, etc.	Item 653.40 19%	Item 688.40 11.5%	Ross Products, Inc. v. U.S. (C.A.D. 994) U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111)	San Diego Electric bird cages, etc.
P74/801	Watson, J. October 16, 1974	The American Import Co.	67/73690, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	Philadelphia Artificial flowers, etc.

						First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	
P74/802	Maletz, J. October 16, 1974	The Florsheim Shoe Company	72-7-01523	Item 121.30 10% or 9.5%	Item 121.57 7% or 6%	Florsheim Shoe Company, Division of Interco, Inc. v. U.S. (C.D. 4495)	Chicago Buffalo calf leather
P74/803	Maletz, J. October 16, 1974	Florsheim Shoe Co., Div. of Interphoto Corporation, et al.	72-11-02311, etc.	Item 121.30 9.5% or 9%	Item 121.57 6% or 5%	Florsheim Shoe Company, Division of Interco, Inc. v. U.S. (C.D. 4495)	Chicago Buffalo calf leather
P74/804	Ford, J. October 17, 1974	Consolidated Merchandising Corp. et al.	67/56380, etc.	Item 684.70 15% or 13%	Item 685.22 12.5% Item 685.25 11%	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021)	New York Earphones
P74/805	Richardson, J. October 17, 1974	General Instrument Corporation	72-2-00325, etc.	Item 687.60 12.5%, 11% or 10% without allowance under item 807.00	Item 687.60/807.00 12.5%, 11% or 10%; cost or value of the U.S. components (items marked "A") deductible from full value of imported merchandise	General Instrument Corporation v. U.S. (C.D.'s 4408, 4470)	New York American goods returned (diodes and other semiconductor devices)

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/806	Watson, J. October 17, 1974	Pacific Coast Commercial, Inc.	67/6255, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Artificial flowers, etc.
P74/807	Watson, J. October 17, 1974	United China & Glass Co.	66/54697, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New Orleans Artificial flowers, etc.
P74/808	Newman, J; October 17, 1974	Mobilite, Inc.	67/27303, etc.	Item 653.40 or 653.39 19%	Liquidations void; protests premature and dismissed; entries returned to regional commissioner for appropriate administrative action	Mobilite, Inc. v. U.S. (C.D. 4478)	New York Fluorescent and high intensity lamps and bulbs imported together (not entireties)
P74/809	Newman, J.						

P74/809	Newman, J. October 17, 1974	Mobilite, Inc.	70/1470, etc.	Item 653.39 19%	Liquidations void; protests premature and dismissed; entries returned to regional commissioner for appropriate administrative action.	Mobilite, Inc. v. U.S. (C.D. 4478)	New York Fluorescent and high intensity lamps and bulbs imported together (not entireties)
P74/810	Newman, J. October 17, 1974	Seaway Importing Co.	70/53769, etc.	Item 206.97 16⅔%	Item 727.35 10.5%	The American Import Co. et al. v. U.S. (C.D. 3807)	San Francisco Gun racks
P74/811	Boe, C.J. October 23, 1974	Casavant Freres, Ltd.	72-10-02145	Item 737.90 17.5%	Item 207.00 8%	Agreed statement of facts	Champlain (Ogdensburg) Letters and numerals wholly or in c.v. of wood, not chiefly used for the amusement of children or adults
P74/812	Boe, C.J. October 23, 1974	Franshaw et al.	74-1-00215, etc.	Item 706.60 20%	Item 774.60 8.5% or 10%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Shopping bags
P74/813	Ford, J. October 23, 1974	American Sanitary Rag Co. et al.	66/45417, etc.	Item 684.70 15%	Item 685.22 12.5%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	Chicago Earphones imported with radios

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/814	Ford, J. October 23, 1974	Norman G. Jensen, Inc., a/c Ross Machine & Mill Supply Plant	69/40777	Item 666.25 9%	Item 680.60 2%	Ross Machine & Mill Supply, Inc., et al. v. U.S. (C.D. 4389)	Duluth Cast-iron rollers
P74/815	Ford, J. October 23, 1974	J. C. Penney Purchasing Corp. et al.	65/2777, etc.	Item 684.70 15% or 13% (items marked "A") Item 706.08 or 706.60 20% (items marked "B")	Item 685.22 or 685.25 12.5% or 11% (items marked "A") Item 685.22 12.5% (entireties) (items marked "B")	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021) (items marked "A") Lafayette Radio Electronics, Corp. v. U.S. (C.A.D. 977) (items marked "B")	San Francisco Earphones (items marked "A") Cases for transistor radios imported with radios (entireties) (items marked "B")
P74/816	Ford, J. October 23, 1974	J. C. Penney Purchasing Corp. et al.	66/11077, etc.	Item 684.70 15%	Item 685.22 12.5%	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021)	Los Angeles Earphones
P74/817	Ford, J. October 23, 1974	R. W. Smith, a/c Ross Machine & Mill Supply Co., et al.	68/30463, etc.	Item 666.25 11.5%	Item 680.58 or 680.60 3%	Ross Machine & Mill Supply, Inc., et al. v. U.S. (C.D. 4389)	Houston Cast-iron rollers

P74/818	Ford, J. October 23, 1974	Trans-Atlantic Company	65/2802, etc.	Item 646.60 22.5%, 20%, 18%, 15.5% Item 646.63 19%, 17%, 15%, 13%	Item 646.49 12.5% (items on invoices of entries in schedule "A" attached to order identified as: not hardened (or unhardened, or non-hardened) sheet metal screws; fully (or fully) thread (or threaded) wood screws; fully thread (or threaded) non-hardened wood screws; (wood screws) Protests dismissed as to entries in schedule "B" attached to said order	Summary judgment Trans-Atlantic Company v. U.S. (C.D. 4344)	Philadelphia Screws
P74/819	Watson, J. October 23, 1974	Guy B. Barham Co., a/c American Eastern Supply Co.	67/60470	Item 646.81 18¢ per doz. plus 8%	Item 646.80 12¢ per doz. plus 8%	Summary judgment	Los Angeles Bicycle padlocks
P74/820	Watson, J. October 23, 1974	Hudson Merchandise Corp.	73-10-02999	Item 544.51 17.5%	Item 544.54 10%	Hudson Merchandise Co. v. U.S. (C.D. 4429)	New York Mirror-flex

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				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/821	Watson, J. October 29, 1974	North American Philips Co., Inc.	63/4594, etc.	Par. 367 19%	Par. 353 13¼%	R. J. Saunders & Co., Inc. v. U.S. (C.D. 4387)	San Francisco/Oakland Shaver cases
P74/822	Richardson, J. October 30, 1974	Kreiss Corporation	65/19934, etc.	Item 653.40 19%	Item 688.40 11.5%	Ross Products, Inc. v. U.S. (C.A.D. 994) U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111)	San Diego Electric bird cages
P74/823	Richardson, J. October 30, 1974	New York Merchandise Co., Inc.	65/6019, etc.	Item 653.40 19%	Item 688.40 11.5%	Ross Products, Inc. v. U.S. (C.A.D. 994) U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111)	San Diego Electric bird cages
P74/824	Watson, J. October 30, 1974	Joseph Markovits et al.	69/8339, etc.	Item 748.20 28%	Item 774.60 17%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New Orleans Artificial flowers, etc.
P74/825	Watson, J. October 30, 1974	N.H.M. Corp.	69/37719, etc.	Item 748.20 26.5% or 25%	Item 774.60 15% or 13.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc., v. U.S. (C.D. 4396)	Los Angeles Merchandise in c.v. of plastic

P74/826	Watson, J. October 30, 1974	North American Philips Co., Inc.	61/12324	Par. 397 20% or 19%	Par. 353 13¾%	R. J. Saunders & Co., Inc. v. U.S. (C.D. 4387)	San Francisco/Oakland Shaver cases
P74/827	Boe, C.J. November 5, 1974	W.T. Grant Co. et al.	74-2-00514, etc.	Item 706.60 20%	Item 774.60 8.5% or 11.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Shopping bags
P74/828	Boe, C.J. November 5, 1974	Gene Miller, Atwood Imports, Inc.	66/55808	Par. 353 12.5%	Protest dismissed as premature; entry returned to district director for further separate appraisement and classification of merchandise in entry, and liquidation of said entry	Judgment on the pleadings Gene Miller et al. v. U.S. (C.D. 3034)	Los Angeles Wood-working machine (other than a reciprocating gang-saw machine) and accompanying electric motors
P74/829	Richardson, J. November 5, 1974	International Polyethylene Bag Co.	68/57167	Item 772.15 17%	Item 703.72 12.5%	Agreed statement of facts	Los Angeles Shower caps
P74/830	Richardson, J. November 5, 1974	New York Merchandise Co., Inc.	66/3412	Item 651.75 58.80%	Item 651.75 .02¢ ea. plus 12.5%	Import Associates of America et al. v. U.S. (C.A.D. 961)	San Diego Flatware sets, barbeque sets, tool sets, or other similar merchandise
P74/831	Richardson, J. November 5, 1974	New York Merchandise Co., Inc.	68/40905	Item 651.75 30.86%	Item 651.75 .28¢ per doz.	Import Associates of America et al. v. U.S. (C.A.D. 961)	San Diego Tool sets, or other similar merchandise

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/832	Watson, J. November 5, 1974	Campana Art Products, Inc.	67/83749, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunoid Trading Corporation et al. v. U.S. (C.D. 3279)	Philadelphia Artificial flowers, etc.
P74/833	Watson, J. November 5, 1974	Norman Import & Export Co.	67/43011	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunoid Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Merchandise in c.v. of plastic
P74/834	Boe, C.J. November 7, 1974	E. Dillingham, Inc.	72-11-02431	Protest not acted upon, by district director, in compliance with sec. 515, T.A. of 1930, as amended	Civil action premature and subject to dismissal as protest not acted upon in accordance with law; action dismissed; district director ordered to take appropriate administrative action not inconsistent with order	Agreed statement of facts	Alexandria Bay (Ogdensburg) All merchandise

P74/835	Boe, C.J. November 7, 1974	Exhibit Sales, Inc.	72-4-00748	Item 772.95 17.5%	Item 772.97 11.5%	Agreed statement of facts	Philadelphia Rotating lite Santa plaque and 30 lights
P74/836	Boe, C.J. November 7, 1974	Franshaw, Inc., et al.	69/36233, etc.	Item 706.60 20%	Item 774.60 13.5%, 11.5% or 15%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Shopping bags
P74/837	Boe, C. J. November 7, 1974	Max Factor & Co.	72-7-01598	Item 774.60 10%	Item 772.20 9%	Judgment on the pleadings	Los Angeles-Long Beach Lipstick covers and lipstick mechanisms, each assessed separately; dutiable as entireties when imported together in equal number
P74/838	Boe, C. J. November 7, 1974	Ross Products, Inc.	69/44723	Par. 397 19%	Par. 353 12½%	Ross Products, Inc. v. U.S; (C.D. 3850)	New York Electrical bird cages
P74/839	Ford, J. November 7, 1974	Creason Corrugating & Machinery Co., Inc.	68/13820	Item 666.25 11.5%	Item 680.60 3%	Ross Machine & Mill Supply, Inc., et al. v. U.S. (C.D. 4389)	Houston Cast-iron rollers

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/840	Ford, J. November 7, 1974	Nippon Electric New York, Inc.	70/41204, etc.	Item 684.70 or 685.50 15%, 13% or 12%	Item 685.22 at 12.5%; Item 685.25 at 11%, 10% or 8.5% (merchandise covered by protests listed on schedule A attached to order) Actions listed on schedule B attached to said order severed from Joined Court No. 70/41204 and dismissed	Judgment on the pleadings Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	San Francisco Earphones
P74/841	Ford, J. November 7, 1974	R. W. Smith, a/c Creason Corrugating & Machinery Co., Ltd.	65/22522, etc.	Item 666.25 11.5%	Item 680.58 3%	Ross Machine & Mill Supply, Inc., et al. v. U.S. (C.D. 4389)	Houston Cast-iron rollers
P74/842	Ford, J. November 7, 1974	R. W. Smith & Co., Inc., a/c CreasonCorrugating & Machinery Co., Inc.	70/14943	Item 666.25 9%	Item 680.60 2%	Ross Machine & Mill Supply, Inc., et al. v. U.S. (C.D. 4389)	New Orleans Cast-iron rollers
P74/843	Ford, J. November 7, 1974	R. W. Smith, a/c Ross Machine & Mill Supply, Inc.	68/30470, etc.	Item 666.25 10% or 9%	Item 680.60 2.5% or 2%	Ross Machine & Mill Supply, Inc., et al. v. U.S. (C.D. 4389)	Houston Cast-iron rollers

P74/844	Ford, J. November 7, 1974	F. B. Vandegrift & Co., Inc.	65/5875, etc.	Item 706.08 20% (items marked "A") Item 684.70 15% (items marked "B")	Item 685.22 12.5% (items marked "A" and "B")	Agreed statement of facts (items marked "A") General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021) (items marked "B")	Philadelphia Cases imported with and used as containers for radios (items marked "A") Earphones imported with radios (items marked "B")
P74/845	Richardson, J. November 7, 1974	L&B Products Corp. et al.	66/11874, etc.	Item 657.35 1.275¢ per lb. plus 15%; 1¢ per lb. plus 13.5%; or 1¢ per lb. plus 12% (items marked "A" or "B")	Item 654.00 10%, 9% or 8% (items marked "A") Merchandise incorrectly appraised and liquidated as entireties; appraisements and liquidations void; protests premature and dismissed; entries returned to regional commissioner for purpose of determining value of merchandise (items marked "B")	The Westbrass Company v. U.S. (C.D. 4293) (items marked "A" and "B")	New York Flat sink strainers, sink strainers, duo basket strainers, wash tray plugs, etc. (items marked "A" and "B")

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/846	Richardson, J. November 7, 1974	L & B Products Corp. et al.	67/4005 (B), etc.	Item 657.35 1.275¢ per lb. plus 15% Item 657.20 17%	Merchandise incorrectly appraised and liquidated as entireties; appraisements and liquidations void; protests premature and dismissed; entries returned to regional commissioner for purpose of determining value of merchandise	The Westbrass Company v. U.S. (C.D. 4293)	New York Duo strainers, brass & duo basket strainers, etc.
P74/847	Richardson, J. November 7, 1974	Mitsubishi International Corp.	71-10-01582	Item 712.40 11%	Item 800.00 Free of duty	Judgment on the pleadings	New York American goods returned (helicopter parts)
P74/848	Richardson, J. November 7, 1974	F. W. Myers & Co., Inc., et al.	66/321, etc.	Item 692.35 11.5%, 10%, 9% or 8%	Item 692.30 Free of duty	U.S. v. F. W. Myers & Co., Inc. (C.A.D. 1097)	Champlain-Rouses Point. Tractors and parts

P74/849	Richardson, J. November 7, 1974	Stanley Roberts, Inc.	65/12804	Items 651.75/ 927.53 95.09%	Items 651.75/ 650.21, 650.49 or 650.557 1¢ ea. plus 17.5%	Decision and judgment U.S. v. Charberjoy Distributors, Inc. (C.A.D. 1068)	New York Sets of knives, forks or spoons with handles composed in part of plastic and in part of stainless steel
P74/850	Richardson, J. November 7, 1974	W. D. Sales Co.	67/46337	Item 685.90 17.5%	Item 685.70 8.5%	Fedtro, Inc. v. U.S. (C.A.D. 1028)	Houston Automobile flasher switches
P74/851	Maletz, J. November 7, 1974	Creative Playthings, Inc.	69/18830, etc.	Item 737.90 31%	Item 737.55 18.5%	Agreed statement of facts	New York Toy building blocks, bricks and shapes
P74/852	Newman, J. November 7, 1974	Wal Rich Corp.	71-12-01901	Item 657.35 $0.08 per lb. plus 10.5%; or $0.07 per lb. plus 9%	Item 654.00 7% or 6%	The Westbrass Company v. U.S. (C.D. 4293)	New York Shower heads or rain heads
P74/853	Re, J. November 7, 1974	Ignaz Strauss & Co., Inc.	67/29789	Item 772.06 17% plus 21¢ per lb.	Item 772.15 17%	Davar Products, Inc. v. U.S. (C.D. 3880)	New York Stacked set of 4 plastic flat bottomed bowls in different sizes and 1 cover for largest bowl
P74/854	Boe, C. J. November 13, 1974	E. Dillingham, Inc.	69/35245, etc.	Item 309.30 13.5¢ or 11.9¢ per lb.	Item 309.75 12% or 10%	E. Dillingham, Inc. v. U.S. (C.D. 4406)	Alexandria Bay (Ogdensburg) Nylon 66, advanced waste
P74/855	Ford, J. November 13, 1974	T. G. Cullen Co.	68/48895, etc.	Item 674.60 15% or 13%	Item 674.70 9% or 8%	Mattoon & Company et al. v. U.S. (C.D. 3747)	San Francisco Von Arx pneumatic tools

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				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/856	Ford, J. November 13, 1974	R. W. Smith, a/c Creason Corrugating & Machinery Co., Inc., et al.	67/46420, etc.	Item 666.25 11.5%	Item 680.60 3%	Ross Machine & Mill Supply, Inc., et al. v. U.S. (C.D. 4389)	Houston Cast-iron rollers
P74/857	Ford, J. November 13, 1974	Transamerican Import Export Co.	65/6101, etc.	Par. 353 15% (items marked "A") Par. 1531 or 1531/1559(a) 20% (items marked "C")	Par. 353 12½% (items marked "A" and "C")	Motorola, Inc., et al. v. U.S. (Abs. 69019); North American Foreign Trading Corp. v. U.S. (C.D. 3968) (items marked "A") Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977) (items marked "C")	Chicago Subminiature earphones (items marked "A") Cases imported with radios (entireties) (items marked "C")
P74/858	Richardson, J. November 13, 1974	Dan Brechner & Co., Inc., et al.	66/15010, etc.	Item 653.40 19%	Item 688.40 11.5%	Ross Products, Inc. v. U.S. (C.A.D. 994) U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111)	New York Electric bird cages, etc.
P74/859	Richardson, J. November 13, 1974	Reliance Merchandise Co., Inc., et al.	66/41247, etc.	Item 653.40 19%	Item 688.40 11.5%	Ross Products, Inc. v. U.S. (C.A.D. 994) U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111)	New York Electric bird cages, etc.
P74/860	Richardson, J. November 13, 1974	Ross Products, Inc.	65/21343, etc.	Item 653.40 19%	Item 688.40 11.5%	Ross Products, Inc. v. U.S. (C.A.D. 994) U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111)	Los Angeles Electric bird cages, etc.
P74/861	Landis, J. November 13, 1974	Le Jeune, Inc.	71-11-01707	Item 310.91 22%	Item 309.21 17% or 15%	Consent judgment Le Jeune, Inc. v. U.S. (C.D. 4289)	San Francisco Yarns of raffia for hand work

P74/862	Re, J. November 13, 1974	American International Hardwood et al.	69/44037, etc.	Item 727.40 17%, 15% or 13.5%	Item 202.53 5%, 4% or 3%	Pacific Hardwood Sales Co. et al. v. U.S. (C.D. 3960)	San Francisco Drawer sides and backs of lumber
P74/863	Re, J. November 13, 1974	Border Brokerage Co., Inc.	73–1–00202	Item 804.20 $339.19 and $305.30 (duty erroneously computed)	Item 804.20 $127.13 (entry 4–08081) and $51.15 (entry 4–08462)	Agreed statement of facts	Blaine (Seattle) American goods returned (tractor and tractor dozer parts)
P74/864	Richardson, J. November 14, 1974	Ross Products, Inc.	65/4649	Item 653.40 19%	Item 688.40 11.5%	Ross Products, Inc. v. U.S. (C.A.D. 994) U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111)	Houston Electric bird cages, etc.
P74/865	Richardson, J. November 14, 1974	Ross Products, Inc.	66/15067, etc.	Item 653.40 19%	Item 688.40 11.5%	Ross Products, Inc. v. U.S. (C.A.D. 994) U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111)	New York Electric bird cages, etc.
P74/866	Richardson, J. November 14, 1974	Westland & Co., Inc., a/c Unimart Overseas Division	66/7393	Item 651.75 26.16%, 30.68%, 13.57%	Item 651.75 .01¢ ea. plus 12.5%	Import Associates of America et al. v. U.S. (C.A.D. 961)	San Diego Flatware sets, etc.
P74/867	Watson, J. November 14, 1974	Brechner Bros. Import Corp.	67/88186, etc.	Item 748.20 28%, 26.5% or 25%	Item 774.60 17%, 15% or 13.5%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial ferns, etc.
P74/868	Watson, J. November 14, 1974	J. E. Mamiye Import Co.	67/24018, etc.	Item 748.20 28%	Item 774.60 17%	First American Artificial Flowers v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	San Francisco Plastic articles
P74/869	Watson, J. November 14, 1974	Joseph Markovits, Inc.	67/31264–S, etc.	Item 748.20 28%	Item 774.60 17%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial flowers, etc.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/870	Richardson, J. November 18, 1974	New York Merchandise Co., Inc.	69/48178	Item 685.22 12.5%	Items 685.22/ 807.00 12.5% upon total value of imported merchandise (transistor radios) less cost or value of U.S. components (transistors)	Judgment on pleadings	San Francisco American goods returned ("10-transistor radio, 'Nobility' brand, Model 1097P")

P74/871	Landis, J. November 18, 1974	General Instrument Corporation	71-10-01274	Item 685.80 12.5% or 12% without allowance under item 807.00	Items 685.80/807.00 12.5% or 12%; cost or value of U.S. components (tinfoil in all entries except 2; backing mica and silvered mica in all entries except 4; tape in all entries except 3; marking tape in all entries except 5), as shown on commercial invoices, deductible from appraised value of imported mica capacitors All claims in protest 1001-0-000420 relating to entry 511781 overruled	Judgment on the pleadings	New York American goods returned (mica capacitors)
P74/872	Maletz, J. November 18, 1974	Exhibit Sales, Inc.	70/44273	Item 683.70 35%	Item 737.90 31%	Amico, Inc. v. U.S. (C.D. 4494)	Philadelphia Toy flashlights

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/873	Maletz, J. November 18, 1974	General Time Corp.	68/17230, etc.	Items 720.82/ 720.12 50¢ ea. plus 32.5%; 45¢ ea. plus 29%; 40¢ ea. plus 26%	Items 720.82/ 720.02 75¢ ea., 67¢ ea. and 60¢ ea.	Agreed statement of facts	Atlanta (Savannah) Assemblies or subassemblies for clock movements, not constructed or designed to operate for over 47 hours without rewinding, measuring less than 1.77" in width, etc.
P74/874	Re, J. November 18, 1974	Border Brokerage Co., Inc.	64/23391	Par. 372 9%	Par. 372 6¼%	Judgment on the pleadings Border Brokerage Company, Inc. v. U.S. (C.D. 4237)	Blaine (Seattle) Internal combustion engines and parts
P74/875	Re, J. November 18, 1974	Border Brokerage Co. Inc.	64/23403	Par. 372 9%	Par. 372 6¼%	Judgment on the pleadings Border Brokerage Company, Inc. v. U.S. (C.D. 4237)	Blaine (Seattle) Internal combustion engines and parts
P74/876	Re, J. November 18, 1974	Border Brokerage Co., Inc.	65/10182	Par. 372 9%	Par. 372 6¼%	Judgment on the pleadings Border Brokerage Company, Inc. v. U.S. (C.D. 4237)	Blaine (Seattle) Internal combustion engines and parts
P74/877	Re, J. November 19, 1974	Border Brokerage Co., Inc.	63/631	Par. 372 10½%	Par. 372 7¾%	Judgment on the pleadings Border Brokerage Company, Inc. v. U.S. (C.D. 4237)	Blaine (Seattle) Internal combustion engines and parts

P74/878	Re, J. November 19, 1974	Border Brokerage Co., Inc.	63/7272	Par. 372 10½%	Par. 372 7¾%	Judgment on the pleadings Border Brokerage Company, Inc. v. U.S. (C.D. 4237)	Blaine (Seattle) Internal combustion engines and parts
P74/879	Re, J. November 19, 1974	Border Brokerage Co., Inc.	63/7287	Par. 372 10½%	Par. 372 7¾%	Judgment on the pleadings Border Brokerage Company, Inc. v. U.S. (C.D. 4237)	Blaine (Seattle) Internal combustion engines and parts
P74/880	Re, J. November 19, 1974	Border Brokerage Co., Inc.	63/16012	Par. 372 10½%	Par. 372 7¾%	Judgment on the pleadings Border Brokerage Company, Inc. v. U.S. (C.D. 4237)	Blaine (Seattle) Internal combustion engines and parts
P74/881	Re, J. November 19, 1974	Border Brokerage Co., Inc.	63/16021	Par. 372 10½%	Par. 372 7¾%	Judgment on the pleadings Border Brokerage Company, Inc. v. U.S. (C.D. 4237)	Blaine (Seattle) Internal combustion engines and parts
P74/882	Re, J. November 19, 1974	Border Brokerage Co., Inc.	64/8122	Par. 372 10½%	Par. 372 7¾%	Judgment on the pleadings Border Brokerage Company, Inc. v. U.S. (C.D. 4237)	Blaine (Seattle) Internal combustion engines and parts
P74/883	Re, J. November 19, 1974	Border Brokerage Co., Inc.	64/14232	Par. 372 10½%	Par. 372 7¾%	Judgment on the pleadings Border Brokerage Company, Inc. v. U.S. (C.D. 4237)	Blaine (Seattle) Internal combustion engines and parts
P74/884	Ford, J. November 20, 1974	International Expediters, Inc.	69/43229, etc.	Item 222.60 20%	Item 666.60 Free of duty	James S. Baker (Imports) Co. et al. v. U.S. (C.D. 3619)	New York Rake heads

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/885	Watson, J. November 20, 1974	Chain Bike Corp. et al.	67/28158 etc.	Item 748.20 28% or 26.5%	Item 774.60 17% or 15%	Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial flowers, etc.
P74/886	Watson, J. November 20, 1974	Creative Art Flowers, Inc., et al.	67/70849, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278)	New York Artificial flowers, etc.
P74/887	Landis, J. November 21, 1974	Beck/Arnley Corp.	71-10-01308	Item 653.39 19%	Item 683.65 5.5% or 5%	Warshawsky & Company v. U.S. (C.D. 4410)	New York Driving lights and fog lights
P74/888	Landis, J. November 21, 1974	Durst Industries, Inc.	66/60939, etc.	Item 774.25 12.5%	Item 773.25 10%	Agreed statement of facts	New York Gaskets of rubber or plastics
P74/889	Watson, J. November 21, 1974	M. Adler's Son, Inc., et al.	67/6187, etc.	Item 748.20 20%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Artificial flowers, etc.

P74/890	Watson, J. November 21, 1974	American Cyanamid Co.	69/29810	Item 425.22 9% on 1227 drums of nitrogenous compound	Item 425.22 9% on 1195 drums as 32 were exported to Canada without having entered the commerce of U.S. and are not subject to duty	Agreed statement of facts	New York Drums of nitrogenous compound
P74/891	Watson, J. November 21, 1974	The American Import Co.	67/74835	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Philadelphia Merchandise in c.v. of plastic
P74/892	Watson, J. November 21, 1974	W. J. Byrnes & Co.	71-10-01462	Item 748.20 25%, 23.5% or 22%	Item 774.60 13.5%, 11.5% or 10%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Seattle Artificial plastic ferns and bananas
P74/893	Watson, J. November 21, 1974	Pacific Coast Commercial, Inc., et al.	67/39165, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Merchandise in c.v. of plastic

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/894	Watson, J. November 21, 1974	Scarburgh Co., Inc.	61/23137, etc.	Par. 405 20%	Par. 412 16⅔%	Agreed statement of facts	San Francisco Particle board core plywood which contains a core of wood chips and wood
P74/895	Watson, J. November 21, 1974	Union Novelty Co., Inc.	66/60205, etc.	Item 748.20 28%	Item 774.60 17%	Joseph Markovits, Inc. v. U.S. (C.D.4396)	New York Artificial ferns, etc
P74/896	Re, J. November 21, 1974	Border Brokerage Co., Inc.	71-10-01378	Item 774.60 11.5% or 10% (items marked "A") Item 678.50 6% (items marked "B")	Item 666.00 Free entry (items marked "A" and "B")	U.S. v. Border Brokerage Company, Inc. (C.A.D. 1058) (items marked "A") Agreed statement of facts (items marked "B")	Blaine (Seattle) Plastic planting bullets (items marked "A") Planting guns (items marked "B")
P74/897	Landis, J. December 3, 1974	General Instrument Corporation	71-8-00709	Item 685.80 12.5%, 12% or 11% without allowance under item 807.00	Items 685.80/ 807.00 12.5%, 12% or 11%; with cost or value of U.S. components (aluminum anode and cathode foils, aluminum cathode	Judgment on the pleadings General Instrument Corporation v. U.S. (C.A.D.'s 1062, 1106; C.D.'s 4408, 4422)	New York American goods returned (aluminum electrolytic capacitors)

					tab, paper, tape, Mylar insulator, and scotch tape) deductible from appraised value of imported merchandise (aluminum electrolytic capacitors) Protest 00942 (entry 975955) and protest 1001-1-000070 (entry 718038) dismissed for lack of jurisdiction		
P74/898	Watson, J. December 3, 1974	Fedtro, Inc.	67/44308	Item 685.90 17.5%	Item 685.70 8.5%	Judgment on the pleadings Fedtro, Inc. v. U.S. (C.A.D. 1028)	New York Flasher switches
P74/899	Watson, J. December 3, 1974	Fedtro, Inc.	68/52489	Item 685.90 17.5%	Item 685.70 8.5%	Judgment on the pleadings Fedtro, Inc. v. U.S. (C.A. D. 1028)	New York Flasher switches
P74/900	Watson, J. December 3, 1974	Fedtro, Inc.	69/17615	Item 685.90 17.5%	Item 685.70 8.5%	Judgment on the pleadings Fedtro, Inc. v. U.S. (C.A. D. 1028)	New York Flasher switches
P74/901	Watson, J. December 3, 1974	Fedtro, Inc.	69/26552	Item 685.90 17.5%	Item 685.70 8.5%	Judgment on the pleadings Fedtro, Inc. v. U.S. (C.A. D. 1028)	New York Flasher switches

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/902	Re, J. December 3, 1974	Border Brokerage Co.	63/625	Par. 372 11.5% (chain saws and gasoline motors as entireties; parts of internal combustion engines separately)	Appraisement and liquidation of chain saws with gasoline motors null and void because separate values and separate classifications were not found; entries returned to district director for further administrative action not inconsistent with judgment Par. 372 8¾% (parts of internal combustion engines)	Judgment on the pleadings Border Brokerage Company, Inc. v. U.S. (C.D. 4237).	Seattle Chain saws with gasoline motors and parts of internal combustion engines
P74/903	Ford, J. December 4, 1974	The Compo Industries, Inc.	68/34448	Item 678.35 10%	Item 678.10 Free of duty	Converse Rubber Company v. U.S. (C.D. 4374)	Savannah 900 series Desma multiple station rotary table injection molding machinery

P74/904	Ford, J. December 4, 1974	International Vulcanizing Corp.	67/86508	Item 678.35 11.5%	Item 678.10 Free of duty	Converse Rubber Company v. U.S. (C.D. 4374)	New York 900 series Desma multiple station rotary table injection molding machinery
P74/905	Richardson, J. December 4, 1974	Halvorson Equipment, Inc., et al.	70/19087, etc.	Item 692.35 11.5%, 10%, 9% or 8%	Item 692.30 Free of duty	U.S. v. F. W. Myers & Co., Inc. (C.A.D. 1097)	Duluth Tractors and parts thereof
P74/906	Landis, J. December 4, 1974	Vilem B. Haan, Inc.	72-4-00819, etc.	Item 653.39 19%	Item 683.65 5.5% or 5%	Warshawsky & Company v. U.S. (C.D. 4410)	Los Angeles Fog and driving lights for motor vehicles
P74/907	Watson, J. December 4, 1974	Corham Artificial Flowers Co.	67/83668, etc.	Item 748.20 28% or 26.5%	Item 774.60 17% or 15%	Armbee Corporation et al. v. U.S. (C.D. 3278) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial flowers, etc.
P74/908	Newman, J. December 4, 1974	J. Blum Importing Co.	67/74217	Item 206.97 or 207.00 16¾%	Item 727.35 10.5%	American Import Co. et al. v. U.S. (C.D. 3807)	Portland, Oreg. Gun racks
P74/909	Re, J. December 4, 1974	The American Import Co. et al.	67/53714, etc.	Item 222.42 34%	Item 222.60 25%	Royal Cathay Trading Co. et al. v. U.S. (C.D. 2662)	San Francisco Hanging planters, sleighs, coolie hat planters, serving trays, snack trays or modern shaped trays

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/910	Re, J. December 4, 1974	Border Brokerage Co.	63/613	Par. 372 11.5% (chain saws and gasoline motors as entireties; parts of internal combustion engines separately)	Appraisement and liquidation of chain saws with gasoline motors null and void because separate values and separate classifications were not found; entries returned to district director for further administrative action not inconsistent with judgment Par. 372 8¼% (parts of internal combustion engines)	Judgment on the pleadings Border Brokerage Company, Inc. v. U.S. (C.D. 4237)	Seattle Chain saws with gasoline motors and parts of internal combustion engines
P74/911	Re, J. December 4, 1974	Border Brokerage Co.	63/615	Par. 372 11.5% (chain saws and gasoline motors as	Appraisement and liquidation of chain saws with gasoline motors null	Judgment on the pleadings Border Brokerage Company, Inc. v. U.S. (C.D. 4237)	Seattle Chain saws with gasoline motors and parts of internal combustion engines

				entireties; parts of internal combustion engines separately)	and void because separate values and separate classifications were not found; entries returned to district director for further administrative action not inconsistent with judgment Par. 372 8¾% (parts of internal combustion engines)		
P74/912	Re, J. December 4, 1974	Border Brokerage Co.	63/023	Par. 372 11.5% (chain saws and gasoline motors as entireties; parts of internal combustion engines separately)	Appraisement and liquidation of chain saws with gasoline motors null and void because separate values and separate classifications were not found; entries returned to district director for further administrative action not inconsistent with judgment Par. 372 8¾% (parts of internal combustion engines)	Judgment on the pleadings Border Brokerage Company, Inc. v. U.S. (C.D. 4237)	Seattle Chain saws with gasoline motors and parts of internal combustion engines

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/013	Re, J. December 4, 1974	Border Brokerage Co.	63/624	Par. 372 11.5% (chain saws and gasoline motors as entireties; parts of internal combustion engines separately)	Appraisement and liquidation of chain saws with gasoline motors null and void because separate values and separate classifications were not found; entries returned to district director for further administrative action not inconsistent with judgment Par. 372 8¾% (parts of internal combustion engines)	Judgment on the pleadings Border Brokerage Company, Inc. v. U.S. (C.D. 4237)	Seattle Chain saws with gasoline motors and parts of internal combustion engines
P74/014	Ford, J. December 9, 1974	J. E. Bernard & Company, Inc., et al.	68/68184, etc.	Item 666.25 10% or 9%	Item 680.60 2.5% or 2%	Ross Machine & Mill Supply, Inc., et al. v. U.S. (C.D. 4389)	Chicago Cast-iron rollers
P74/015	Ford, J. December 9, 1974	Ross Machine & Mill Supply Plant	69/19237	Item 666.25 11.5%	Item 680.60 3%	Ross Machine & Mill Supply, Inc., et al. v. U.S. (C.D. 4389)	New York Cast-iron rollers

P74/916	Ford, J. December 9, 1974	F. W. Woolworth Co.	65/16110	Item 389.60 30% plus 25¢ per lb.	Item 256.50 8.5% plus 2¢ per lb.	Henry A. Wess, Inc. v. U.S. (C.D. 4361)	San Francisco Jewelry boxes in c.v. of cardboard
P74/917	Watson, J. December 9, 1974	Max Factor & Co.	70/15422, etc.	Item 774.60 13.5% or 11.5%	Item 772.20 12% or 10%	Agreed statement of facts	Los Angeles Lipstick covers and lip stick mechanisms, each assessed separately; dutiable as entireties when imported together in equal number
P74/918	Maletz, J. December 9, 1974	Westinghouse Electric Corp.	69/48140, etc.	Item 720.04 $1.12 ea. (clock movements for clock radios constructively segregated, together with the clock crystals)	Item 720.02 67¢ ea. (clock movements having 1 jewel each) Item 685.33 12% (clock crystals; as an entirety with the radios)	Agreed statement of facts	San Francisco Clock movements for model H968PLA and H968PLB clock radios; clock crystals not part of constructively segregated clock movements
P74/919	Re, J. December 9, 1974	New York Merchandise Co., Inc.	66/75988	Item 653.40 19%	Protest premature; appraisement and liquidation not in accordance with law; protest dismissed; regional commissioner ordered to take appropriate action not inconsistent with order	Mobilite, Inc. v. U.S. (C.R.D. 73–11)	New York Fluorescent lamps with bulbs

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/920	Re, J. December 9, 1974	Spartans Industries (Division of Arlen Realty & Development Corp.)	73-1-00021	Item 772.15 10%	Item 772.35 7%	Venetianaire Corp. of America v. U.S. (C.A.D. 1084)	New York Vinyl mattress covers and merchandise similarly described
P74/921	Ford, J. December 10, 1974	Bombardier, Ltd., et al.	71-9-01203, etc.	Item 692.35 8% or 6.5%	Item 692.30 Free of duty	U.S. v. F. W. Myers & Co., Inc. (C.A.D. 1097)	Champlain (Ogdensburg) Tractors and parts of said tractors
P74/922	Richardson, J. December 10, 1974	Jacobson Mfg. Co., Inc.	73-7-01834	Item 657.20 9.5%	Item 646.56 0.1¢ per lb.	Summary judgment (plaintiff's motion granted; defendant's cross-motion denied)	Philadelphia Hex washered lock nuts
P74/923	Watson, J. December 10, 1974	Caltrade Mfg. & Trading Co.	66/44912, etc.	Item 684.70 or 685.50 15%	Item 685.22 12.5%	Judgment on the pleadings	San Francisco Earphones
P74/924	Watson, J. December 10, 1974	Carson M. Simon & Co. et al.	69/26084, etc.	Item 748.20 28% or 26.5% (items marked "P" and "B")	Item 774.60 17% or 15% (items marked "P" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "P") Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	Philadelphia Artificial flowers, etc. (items marked "P" and "B")

P74/925	Re, J. December 10, 1974	Little Jones Co., Inc.	73-10-02897	Item 256.90 8.5%	Item 765.03 Duty free rate	M. H. Garvey Co. v. U.S. (C.D. 4051) Sanji Kobata et al. v. U.S. (C.D. 4213)	New York Handpainted wall hangings
P74/926	Boe, C.J. December 12, 1974	Empire Mercantile Corp. et al.	70/30197, etc.	Item 706.60 20%	Item 774.60 11.5%or 13.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Shopping bags
P74/927	Boe, C.J. December 12, 1974	S. S. Kresge Co.	73-12-03378, etc.	Item 706.60 20%	Item 774.60 8.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	Longview (Portland, Oreg.) Shopping bags
P74/928	Ford, J. December 12, 1974	Associated Importers et al.	65/4265, etc.	Item 684.70 or 685.50 15%	Item 685.22 12.5%	Judgment on the pleadings	San Francisco Earphones
P74/929	Ford, J. December 12, 1974	F. W. Myers & Co., Inc.	67/89523	Item 727.55 or 382.33 20%	Item 810.10, 812.10 or 813.10 Free of duty	F. W. Myers & Co. Inc. v. U.S. (C.D. 4431)	Champlain (Ogdensburg) Household goods, household effects, or personal effects of returning residents of U.S. or of persons not returning residents
P74/930	Richardson, J. December 12, 1974	Bombardier, Ltd.	73-4-00887	Item 692.35 6.5% with a supplemental duty of 10% under item 948.00	Item 692.30 Free of duty	U.S. v. F. W. Myers & Co., Inc. (C.A.D. 1097)	Detroit Tractors and tractor parts
P74/931	Richardson, J. December 12, 1974	Huyck Corp. et al.	68/49179, etc.	Item 358.50 27% plus 22¢ per lb. Item 358.08 or 358.30	Item 807.00 Upon full value of imported article less cost or value	E. Dillingham, Inc. v. U.S. (C.A.D. 1078)	Albany (New York) Needled papermakers' felts

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
				15% plus 37.5¢ per lb. Item 358.30 13% plus 37.5¢ per lb.	of American base fabric component of such article		
P74/932	Watson, J. December 12, 1974	H. J. Ashe Co.	68/44490, etc.	Item 683.70 35% (as entireties)	Defendant's motion for dismissal denied; plaintiff's motion for summary judgment granted Separate values not returned; protests dismissed as premature; entry returned to district director for further administrative action not inconsistent with judgment	Summary judgment	Los Angeles Batteries and flashlights
P74/933	Watson J. December 12, 1974	R. J. Saunders & Co., Inc.	67/70044, etc.	Item 684.70 15% or 13%	Item 685.40 11.5% or 10%	Agreed statement of facts	New York Articles solely or chiefly used as parts of dictation recording machines

P74/934	Newman, J. December 12, 1974	Mobilite, Inc.	69/6793, etc.	Item 653.40 or 653.39 19%	Liquidations void; protests premature and dismissed; entries returned to regional commissioner for appropriate administrative action	Mobilite, Inc. v. U.S. (C.D. 4478)	New York Fluorescent and high intensity lamps and bulbs imported together; dutiable separately not as entireties
P74/935	Re, J. December 12, 1974	Fanon Electronic Industries, Inc.	67/51539, etc.	Item 684.62 17.5% Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Intercoms and printed circuit boards
P74/936	Re, J. December 12, 1974	Lucas Electrical Services, Inc.	69/42115, etc.	Item 653.39 19% (items marked "A" and "B")	Item 683.65 8.5%, 7.5% or 6.5% (items marked "A") Item 685.70 8.5%, 7.5% or 6.5% (items marked "B")	Agreed statement of facts	New York Electric lighting equipment designed for motor vehicles, or parts thereof (items marked "A") Electrical visual signalling apparatus, or parts thereof (items marked "B")
P74/937	Re, J. December 12, 1974	R.J. Saunders & Co., Inc.	67/50333, etc.	Item 684.70 15%, 13% or 12%	Item 685.40 11.5%, 10% or 9%	Agreed statement of facts	New York Articles solely or chiefly used as parts of dictation recording machines
P74/938	Richardson, J. December 17, 1974	Bombardier, Ltd.	73-1-00311	Item 692.35 6.5% or 5.5% Item 692.16 5.5%	Item 692.30 Free of duty	U.S. v. F.W. Myers & Co., Inc. (C.A.D. 1097)	Champlain (Ogdensburg); Detroit; Port Huron (Detroit) Carriers, tractors and parts of tractors

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/939	Richardson, J. December 17, 1974	Victor B. Handal & Bro., Inc.	66/20991, etc.	Item 653.40 19%	Item 688.40 11.5%	U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111)	New York Bird cages with flowers and lights
P74/940	Landis, J. December 17, 1974	G. E. Amador & Company	70/5555, etc.	Item 653.39 19%	Item 683.65 6.5%	Warshawsky & Company v. U.S. (C.D. 4410)	Los Angeles Electric lighting equipment designed for motor vehicles and parts thereof
P74/941	Landis, J. December 17, 1974	D. H. McClary et al.	65/16221, etc.	Item 649.43 30%, 27% or 24%	Item 649.17 8%, 7% or 6%	Border Brokerage Co., Inc. v. U.S. (C.D. 4062)	Seattle Dadoes
P74/942	Watson, J. December 17, 1974	Bruce Duncan Co., Inc., a/c American Honda Motor Co., Inc.	67/1717	Item 685.90 17.5%	Item 683.60 8.5%	Judgment on the pleadings	Los Angeles Contact breakers or breaker assemblies
P74/943	Watson, J. December, 17 1974	Rice Bayersdorfer Co.	67/6403	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185)	Philadelphia Artificial flowers, etc.
P74/944	Malets, J. December 17, 1974	Famous Jobbing, Co., Inc., et al.	63/11022, etc.	Pars. 1537(b) 1559(a) 12½%	Par. 1558 8½%	U.S. v. Weather-Rite Sportswear Co., Inc. (C.A.D. 848) Rettinger Raincoat Mfg.	Los Angeles Footwear in c.v. of synthetic rubber

						Co. v. U.S. (C.A.D. 989) Weather-Rite Sportswear Co., Inc. v. U.S. (C.D. 4280)	
P74/945	Re, J. December 17, 1974	Bazaar, Inc.	72-8-01777	Item 772.06 16.5¢ plus 13.5%	Item 772.15 13.5%	Judgment on the pleadings Davar Products, Inc. v. U.S. (C.D. 3880)	Portland, Oreg. Snack sets (3-tier) (PAA-6)
P74/946	Re, J. December 17, 1974	Border Brokerage Co., Inc.	64/16420	Par. 372 10.5%	Par. 372 6¾%	Judgment on the pleadings Border Brokerage Company, Inc. v. U.S. (C.D. 4237)	Blaine (Seattle) Parts of internal combustion engines
P74/947	Boe, C.J. December 19, 1974	Dora May Company, Inc.	74-3-00613	Item 706.60 20%	Item 774.60 8.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Shopping bags
P74/948	Ford, J. December 19, 1974	W.J. Byrnes & Co., Inc.	69/9464	Item 684.70 or 685.50 15%	Item 685.22 12.5%	Judgment on the pleadings	Seattle Earphones
P74/949	Ford, J. December 19, 1974	Kanematsu New York, Inc.	68/1486	Item 684.70 or 685.50 15%	Item 685.22 12.5%	Judgment on the pleadings	New York Earphones
P74/950	Ford, J. December 19, 1974	Trans American Import & Export Co., Inc.	67/42674	Par. 1531 or 1531/1559(a) 20%	Par. 353 12½%	Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977)	Chicago Cases imported with radios
P74/951	Ford, J. December 19, 1974	Universal Transcontinental Corp.	67/49458	Item 684.70 15% or 13%	Item 685.22 12.5% Item 685.25 11%	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021)	New York Earphones
P74/952	Richardson, J. December 19, 1974	F.W. Myers & Co., Inc.	67/40581, etc.	Item 692.35 11.5% 10%, 9% or 8%	Item 692.30 Free of duty	U.S. v. F.W. Myers & Co., Inc. (C.A.D. 1097)	Port Huron (Detroit) Tractors and parts thereof

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DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/953	Landis, J. December 19, 1974	Chieftain Uniworld Corp. et al.	70/48367 etc.	Item 653.39 19%	Item 683.65 7.5% or 6.5%	Warshawsky & Company v. U.S. (C.D. 4410)	New York Driving lights and fog lights
P74/954	Landis, J. December 19, 1974	Warshawsky & Company	72-11-02371, etc.	Item 653.39 19%	Item 683.65 5.5%, 5% or 4%	Warshawsky & Company v. U.S. (C.D. 4410)	Chicago Lights
P74/955	Re, J. December 19, 1974	Anderson & Thompson Ski Co., Inc.	70/61357	Item 705.35 15%	Item 734.97 12.5% (as to certain glove styles listed in order) Protest dismissed as to all other merchandise	Judgment on the pleadings Stonewall Trading Co. v. U.S. (C.D. 4023)	Boston Gloves of horsehide or cowhide (except calfskin) leather
P74/956	Re, J. December 19, 1974	Anderson & Thompson Ski Co., Inc.	70/61377	Item 705.35 15%	Item 734.97 14.5% (as to certain glove styles listed in order) Protest dismissed as to all other merchandise	Judgment on the pleadings Stonewall Trading Co. v. U.S. (C.D. 4023)	Boston Gloves of horsehide or cowhide (except calfskin) leather
P74/957	Richardson, J. December 23, 1974	Macy's of California	69/44072	Item 651.75 30.29% and 25.5%	Item 651.75 1¢ ea. plus 12.5%	Judgment on the pleadings Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Stainless steel flatware sets

P74/958	Richardson, J. December 23, 1974	Otagiri Mercantile Co.	70/5066	Item 651.75 19.55%	Item 651.75 1.8¢ ea. plus 11%	Judgment on the pleadings Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Salad server sets
P74/959	Re, J. December 23, 1974	Anderson & Thompson Ski Co., Inc.	70/42909	Item 705.35 15%	Item 734.97 14.5% (as to certain glove styles listed in order) Protest dismissed as to all other merchandise	Judgment on the pleadings Stonewall Trading Co. v. U.S. (C.D. 4023)	Seattle Gloves of horsehide or cowhide (except calfskin) leather
P74/960	Re, J. December 23, 1974	Anderson & Thompson Ski Co., Inc.	70/53012	Item 705.35 15%	Item 734.97 12.5% (as to certain glove styles listed in order) Protest dismissed as to all other merchandise	Judgment on the pleadings Stonewall Trading Co. v. U.S. (C.D. 4023)	Boston Gloves of horsehide or cowhide (except calfskin) leather
P74/961	Re, J. December 23, 1974	Anderson & Thompson Ski Co., Inc.	70/55204(A)	Item 705.35 15%	Item 734.97 14.5% or 12.5% (as to certain glove styles listed in order) Protest dismissed as to all other merchandise	Judgment on the pleadings Stonewall Trading Co. v. U.S. (C.D. 4023)	Seattle Gloves of horsehide or cowhide (except calfskin) leather

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/962	Re, J. December 23, 1974	Anderson & Thompson Ski Co., Inc.	70/63907	Item 705.35 15%	Item 734.97 12.5% (as to certain glove styles listed in order) Protest dismissed as to all other merchandise	Judgment on the pleadings Stonewall Trading Co. v. U.S. (C.D. 4023)	Seattle Gloves of horsehide or cowhide (except calfskin) leather
P74/963	Ford, J. December 30, 1974	Dejur Amsco Corporation	71-6-00278	Item 684.70 12% or 10%	Item 685.40 9% or 8%	Judgment on the pleadings U.S. v. General Electric Co. (C.A.D. 1021) (invoice item No. 558 earphones)	New York Microphones (invoice item Nos. 520 and 520(c)) and earphones (No. 558)
P74/964	Watson, J. December 30, 1974	Mitsui & Co. (U.S.A.), Inc.	69/5756	Item 732.36 27%	Item 610.49 10.5%	Judgment on the pleadings	New York Steel tubes
P74/965	Watson, J. December 30, 1974	Mitsui & Co. (U.S.A.), Inc.	69/36013	Item 732.36 24%	Item 610.49 10.5%	Judgment on the pleadings	New York Steel tubes
P74/966	Watson, J. December 30, 1974	Norman Import & Export Co., Inc., et al.	67/80558, etc.	Item 748.20 28%, 26.5% or 25%	Item 774.60 17%, 15% or 13.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185)	Los Angeles Merchandise in c.v. of plastic

						Joseph Markovits, Inc. v. U.S. (C.D. 4396)	
P74/967	Watson, J. December 30, 1974	Olympia Sports Company, Inc.	74-1-00241	Item 705.35 15%	Item 735.05 7.5%	Agreed statement of facts	New York Gloves and mittens, styles 5000 and 5001
P74/968	Maletz, J. December 30, 1974	Creative Playthings, Inc.	69/36225, etc.	Item 737.90 31%	Item 737.55 18.5%	Agreed statement of facts	New York Toy building blocks, bricks and shapes
P74/969	Ford, J. December 31, 1974	R. W. Smith, a/c Creason Corrugating & Machinery, et al.	68/30446, etc.	Item 666.25 10%, 9% or 8%	Item 680.60 2.5% or 2%	Ross Machine & Mill Supply, Inc., et al. v. U.S. (C.D. 4389)	Houston Cast-iron rollers
P74/970	Ford, J. December 31, 1974	R. W. Smith & Co., Inc., a/c Ross Machine & Mill Supply Plant	70/11480, etc.	Item 666.25 8%	Item 680.60 2%	Ross Machine & Mill Supply, Inc., et al. v. U.S. (C.D. 4389)	Houston Cast-iron rollers
P74/971	Watson, J. December 31, 1974	Airborne Freight Corp., a/c Lighty Manufacturing Co., et al.	67/68586, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Fowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Merchandise in c.v. of plastic
P74/972	Watson, J. December 31, 1974	F.T.V. Corporation	72-9-02008	Item 748.20 23.5% or 22%	Item 774.60 11.5% or 10%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Laredo Merchandise in c.v. of plastic

ABSTRACTS OF CUSTOMS COURT DECISIONS

Reappraisements

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R74/266	Richardson, J. July 2, 1974	F & D Trading Corp.	72-6-01462	Cost of production	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value"	U.S. v. F & D Trading Corp. (C.A.D. 1089)	New York Various model Volkswagen automobiles
R74/267	Re, J. July 5, 1974	Consolidated Merchandising Corp.	71-12-02106	Constructed value	As set forth in schedule annexed to decision and judgment Protest 2704-1-002694 (Los Angeles) not included in submission; dismissed	Agreed statement of facts	Los Angeles; San Francisco Solid-state (tubeless) radio receivers, or combination articles containing such receivers, together with batteries, and/or earphones, and/or other accessories
R74/268	Re, J. July 5, 1974	New York Merchandise Co., Inc.	R66/14336	Export value; Appraised value less the buying commissions shown on said invoices	Not stated	Agreed statement of facts	Los Angeles Radios, tape recorders and similar merchandise

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R74/269	Re, J. July 16, 1974	The Beton Co. et al.	287147-A, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R74/270	Re, J. July 16, 1974	The East Asiatic Co.	R59/27	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/271	Re, J. July 16, 1974	United States Plywood Corp.	R59/2858, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R74/272	Newman, J. July 22, 1974	A & A Trading Corp.	72-9-02040	Constructed value: Appraised values less the amounts described as the "commission"	Not stated	Agreed statement of facts	Los Angeles Radio, lamp, and clock installation portion of the "Solid State AM/FM Lamp Clock Radios"
R74/273	Boe, C. J. July 26, 1974	Millmaster International, Inc.	R59/668, etc.	United States value	Set forth in schedule "B" attached to decision and judgment	Millmaster International, Inc., et al. v. U. S. (C.A.D. 987)	New York Thiouren
R74/274	Re, J. July 26, 1974	Frank P. Dow Co., Inc., of L.A. et al.	R/58/3179 etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U. S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood

R74/275	Newman, J. August 8, 1974	Chadwick-Miller, Inc.	R69/7022, etc.	Export value: Invoice unit ex-factory price, exclusive of invoiced amounts of buying commissions and inland freight and shipping charges, net, packed	Not stated	Chadwick-Miller Importers, Inc., et al. v. U.S. (R.D. 11743)	Boston Sundry items
R74/276	Re, J. August 8, 1974	Balfour, Guthrie & Co., Ltd.	R59/849, etc.	Export value: Net appraised value less 7½%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927).	Portland, Oreg. Japanese plywood
R74/277	Watson, J. August 20, 1974	A & A Trading Corp.	72-1-00201, etc.	Export value: Appraised values less amounts described as the "commission"	Not stated	A & A Trading Corp. v. U.S. (C.D. 4472)	Philadelphia All merchandise imported under subject entries
R74/278	Newman, J. August 20, 1974	Chadwick-Miller, Inc.	R66/8351, etc.	Export value: Invoice unit ex-factory price, exclusive of invoiced amounts of buying commissions and inland freight and shipping charges, net, packed	Not stated	Chadwick-Miller Importers, Inc., et al. v. U.S. (R.D. 11743)	San Diego Sundry items
R74/279	Newman, J. August 20, 1974	Chadwick-Miller, Inc.	R69/1970, etc.	Export value: Invoice unit ex-factory price, exclusive of invoiced amounts of buying commissions and inland freight and shipping charges, net, packed	Not stated	Chadwick-Miller Importers, Inc., et al. v. U.S. (R.D. 11743)	Boston Sundry items

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R74/280	Newman, J. August 20, 1974	Consolidated Sewing Co.	72-6-01408	Constructed value	$5.54 for each radio receiver including U.S. transistors valued at $0.55 for each set of transistors, and $2.58 for each clock movement or timer, of which $0.79 is of foreign origin and $1.79 is of U.S. Origin	Agreed statement of facts	San Francisco Solid state (tubeless) clock radios
R74/281	Newman, J. August 20, 1974	Jet Air Service	R65/15290, etc.	Constructed value: Entered values	Not stated	Agreed statement of facts	New York "Discos Fonographicos-LP-12" (Phono Records LP-12") and "stereo" records.
R74/282	Newman, J. August 20, 1974	Reedy Forwarding Co., Inc.	R65/2345	Export value: Invoice unit ex-factory price, exclusive of invoiced amounts of buying commissions and inland freight and shipping charges, net, packed	Not stated	Chadwick-Miller Importers, Inc., et al. v. U.S. (R.D. 11743)	Miami Sundry items
R74/283	Newman, J. August 21, 1974	Chadwick-Miller, Inc.	R68/11164, etc.	Export value: Invoice unit ex-factory price, exclusive of invoiced amounts of buying commissions and inland freight and ship-	Not stated	Chadwick-Miller Importers, Inc., et al. v. U.S. (R.D. 11743)	Los Angeles Sundry items

				ping charges, net, packed			
R74/284	Newman, J. August 21, 1974	Chadwick-Miller, Inc.	R68/17004, etc.	Export value: Invoice unit ex-factory price, exclusive of invoiced amounts of buying commissions and inland freight and shipping charges, net, packed	Not stated	Chadwick-Miller Importers, Inc., et al. v. U.S. (R.D. 11743)	Los Angeles Sundry items
R74/285	Newman, J. August 21, 1974	Chadwick-Miller, Inc.	R68/18528, etc.	Export value: invoice unit ex-factory price, exclusive of invoiced amounts of buying commissions and inland freight and shipping charges, net, packed	Not stated	Chadwick-Miller Importers, Inc., et al. v. U.S. (R.D. 11743)	Los Angeles Sundry items
R74/286	Newman, J. August 21, 1974	Chadwick-Miller, Inc.	R69/10683, etc.	Export value: Invoice unit ex-factory price, exclusive of invoiced amounts of buying commissions and inland freight and shipping charges, net, packed	Not stated	Chadwick-Miller Importers, Inc., et al. v. U.S. (R.D. 11743)	Los Angeles Sundry items
R74/287	Newman, J. August 21, 1974	Chadwick-Miller, Inc.	R69/10730, etc.	Export value: Invoice unit ex-factory price, exclusive of invoiced amounts of buying commissions and inland freight and shipping charges, net, packed	Not stated	Chadwick-Miller Importers, Inc., et al. v. U.S. (R.D. 11743)	Los Angeles Sundry items

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R74/288	Newman, J. August 21, 1974	Chadwick-Miller, Inc.	R69/13089, etc.	Export value: Invoice unit ex-factory price, exclusive of invoiced amounts of buying commissions and inland freight and shipping charges, net, packed	Not stated	Chadwick-Miller Importers, Inc., et al. v. U.S. (R.D. 11743)	Los Angeles Sundry items
R74/289	Newman, J. August 21, 1974	Chadwick-Miller, Inc.	R69/13435, etc.	Export value: Invoice unit ex-factory price, exclusive of invoiced amounts of buying commissions and inland freight and shipping charges, net, packed	Not stated	Chadwick-Miller Importers, Inc., et al. v. U.S. (R.D. 11743)	Los Angeles Sundry items
R74/290	Newman, J. August 22, 1974	Chadwick-Miller, Inc.	R69/9451, etc.	Export value: Invoice unit ex-factory price, exclusive of invoiced amounts of buying commissions and inland freight and shipping charges, net, packed	Not stated	Chadwick-Miller Importers, Inc., et al. v. U.S. (R.D. 11743)	Boston Sundry items
R74/291	Newman, J. August 22, 1974	Chadwick-Miller ,Inc.	R69/13105, etc.	Export value· Invoice unit ex-factory price, exclusive of invoiced amounts of buying commissions and in-	Not stated	Chadwick-Miller Importers, Inc., et al. v. U.S. (R.D. 11743)	Los Angeles Sundry items

				land freight and shipping charges, net, packed.			
R74/292	Re, J. August 22, 1974	Atkins Kroll & Co. et al.	R61/16818, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R74/293	Re, J. August 22, 1974	Berelson, Inc., et al.	283250-A, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R74/294	Re, J. August 23, 1974	M. S. Cowen & Co. et al	R59/6435, etc.	Export value: Net appraised value less 7¼%	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R74/295	Re, J. August 23, 1974	Isbrandtsen Co. of Calif., Inc., et al.	298070-A, etc.	Export value: Net appraised value less 7¼% net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/296	Re, J. August 23, 1974	Rafael Ferran Martinez	R58/23059, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Juan Japanese plywood
R74/297	Re, J. August 23, 1974	Rafael Ferran Martinez	R58/26453, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Mayaguez (San Juan) Japanese plywood
R74/298	Re, J. August 23, 1974	C. T. Takahashi & Co., Inc., et al.	R59/11738, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Portland, Oreg. Japanese plywood

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R74/299	Re, J. August 26, 1974	Aircargo Brokerage Co.	R58/18836	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Miami Japanese plywood
R74/300	Re, J. August 26, 1974	D.C. Andrews & Co. of LA, Inc., et al.	R60/16100, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New Orleans Japanese plywood
R74/301	Re, J. August 26, 1974	Atkins, Kroll & Co. et al.	R59/5867, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R74/302	Re, J. August 26, 1974	Balfour, Guthrie & Co., Ltd.	R61/7385	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Baltimore Japanese plywood
R74/303	Re, J. August 26, 1974	Geo. S. Bush & Co., Inc., et al.	R58/21092, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R74/304	Re, J. August 26, 1974	Geo. S. Bush & Co., Inc., et al.	R59/11377, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Portland, Oreg. Japanese plywood
R74/305	Re, J. August 26, 1974	Geo. S. Bush & Co., Inc.	R59/18909, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Portland, Oreg. Japanese plywood

R74/306	Re, J. August 26, 1974.	Davis, Turner & Co. et al.	R58/25876, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New York Japanese plywood
R74/307	Re, J. August 26, 1974	Frank P. Dow Co., Inc.	R60/1695	Export value: Net appappraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Portland, Oreg. Japanese plywood
R74/308	Re, J. August 26, 1974	Getz Bros. & Co. et al.	R60/6374, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Tampa Japanese plywood
R74/309	Re, J. August 26, 1974	Getz Bros. & Co.	R61/15139	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Diego Japanese plywood
R74/310	Re, J. August 26, 1974	B. A. McKenzie & Co., Inc., et al.	R58/21828, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C A.D. 927)	Tacoma (Seattle) Japanese plywood
R74/311	Re, J. August 26, 1974	R. P. Oldham Co.	R58/10134	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Galveston Japanese plywood
R74/312	Re, J. August 26, 1974	Pan Pacific Overseas Corp.	R61/2944, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Charleston, S.C. Japanese plywood

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R74/313	Re, J. August 26, 1974	E. F. Philbin	R61/3468, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New Orleans Japanese plywood
R74/314	Re, J. August 26, 1974	Toyomenka, Inc.	R58/10389, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/315	Watson, J. August 28, 1974	A & A Trading Corp.	73-9-02614	Export value: Appraised values less amounts described as "commission"	Not stated	A & A Trading Corp. v. U.S. (C.D. 4472)	Fort Worth (Houston) All merchandise imported under subject entries
R74/316	Re, J. August 29, 1974	Atkins, Kroll & Co., Ltd., et al.	R58/18408, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Philadelphia Japanese plywood
R74/317	Re, J. August 29, 1974	Atkins, Kroll & Co., Ltd., et al.	R59/1946, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Norfolk Japanese plywood
R74/318	Re, J. August 29, 1974	Atkins, Kroll & Co., Ltd., et al.	R59/9240, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New York Japanese plywood
R74/319	Re, J. August 29, 1974	Atkins, Kroll & Co., Ltd., et al.	R64/3758, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Newport News—Norfolk Japanese plywood
R74/320	Re, J. August 29, 1974	Balfour, Guthrie & Co., Ltd.	R58/16630, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood

R74/321	Re, J. August 29, 1974	Biddle Purchasing Co.	R61/9910, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New Orleans Japanese plywood
R74/322	Re, J. August 29, 1974	Blanchard Lumber Co. of Portland, Oregon.	R63/6948, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Miami Japanese plywood
R74/323	Re, J. August 29, 1974	Geo. S. Bush & Co., Inc., et al.	R58/22512, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Portland, Oreg. Japanese plywood
R74/324	Re, J. August 29, 1974	The East Asiatic Co., Inc., et al.	R58/20453, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Norfolk Japanese plywood
R74/325	Re, J. August 29, 1974	J. Gerber & Co., Inc.	278488-A, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Boston Japanese plywood
R74/326	Re, J. August 29, 1974	Getz Bros. & Co. et al.	R58/10374, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Diego Japanese plywood
R74/327	Re, J. August 29, 1974	Getz Bros. & Co. et al.	R58/17708, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R74/328	Re, J. August 29, 1974	W. R. Grace & Co. et al.	R59/11327, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R74/329	Re, J. August 29, 1974	Harman Plywood & Lumber Co. et al.	R58/27731, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Seattle Japanese plywood

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R74/330	Re, J. August 29, 1974	Marubeni Iida (New York), Inc., et al.	R59/5717, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New York Japanese plywood
R74/331	Re, J. August 29, 1974	Robert S. Osgood et al.	R61/7220, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Boston Japanese plywood
R74/332	Richardson, J. September 11, 1974	Drexel Motors, Inc., et al.	72-1-00199, etc.	Cost of production	For each automobile model is the appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (in Deutsch Marks)"	U.S. v. F & D Trading Corp. (C.A.D.1089)	Baltimore Various model Volkswagen automobiles
R74/333	Watson, J. September 18, 1974	A & A Trading Corp. et al.	72-8-01699, etc.	Export value: Appraised values less amounts included as the proportionate part of the buying commission	Not stated	A & A Trading Corp. v. U.S. (C.D. 4472)	New York All merchandise imported under subject entries
R74/334	Watson, J. September 18, 1974	A. N. Deringer, Inc.	72-11-02222	Export value	As shown on schedule annexed to decision and judgment	Agreed statement of facts	Alexandria Bay (Ogdensburg) Coated fabrics

R74/335	Watson, J. September 18, 1974	R. W. Smith & Co., Inc., a/c Camp Trails	R70/9061, etc.	Constructed value	As stated in schedule "A" attached to decision and judgment; proper values of allowable U.S. components included therein	Agreed statement of facts	Houston Rucksacks, packs, etc., assembled in El Salvador of U.S. components
R74/336	Re, J. September 18, 1974	Industries Unlimited et al.	R60/13076, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/337	Re, J. September 18, 1974	B. A. McKenzie & Co., Inc., et al.	R58/19399, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Tacoma (Seattle) Japanese plywood
R74/338	Re, J. September 19, 1974	Biddle Purchasing Co. et al.	R61/9967, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New York Japanese plywood
R74/339	Re, J. September 19, 1974	Pacific Wood Products Co.	R65/12144, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New London (Bridgeport) Japanese plywood
R74/340	Re, J. September 19, 1974	Charles A. Redden, Inc.	R64/14105, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Newark (New York) Japanese plywood
R74/341	Re, J. September 23, 1974	Balfour, Guthrie & Co., Ltd.	R58/26262, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R74/342	Re, J. September 23, 1974	Balfour, Guthrie & Co., Ltd.	R59/851	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Portland, Oreg. Japanese plywood

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R74/343	Re, J. September 23, 1974	Balfour, Guthrie & Co., Ltd., et al.	R59/6699, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R74/344	Re, J. September 24, 1974	Getz Bros. & Co., Inc.	282562-A	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Baltimore Japanese plywood
R74/345	Re, J. September 24, 1974	B. A. McKenzie & Co., Inc.	R61/17315, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Tacoma (Seattle) Japanese plywood
R74/346	Re, J. September 24, 1974	National Carloading Corp.	R68/20076, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New York Japanese plywood
R74/347	Re, J. September 24, 1974	U.S. Plywood Corporation	278814-A	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New York Japanese plywood
R74/348	Re, J. September 24, 1974	W.R. Zanes & Company	R61/2971	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Galveston Japanese plywood
R74/349	Watson, J. September 25, 1974	Robert F. Barnes	R65/10411, etc.	Constructed value	As set forth in schedule C attached to decision and judgment	Brown, Alcantar & Brown, Inc., et al. v. U.S. (A.R.D. 306)	San Antonio (Laredo) Phonograph records
R74/350	Watson, J. September 25, 1974	Brown, Alcantar & Brown, Inc., a/c RCA Records Div.	R70/9048, etc.	Constructed value	As set forth in schedule C attached to decision and judgment	Brown, Alcantar & Brown, Inc., et al. v. U.S. (A.R.D. 306)	El Paso Phonograph records

R74/351	Re, J. October 3, 1974	Wilfred Schade & Co., Inc.	R58/14277, etc.	Export value: Net appraised value less 7¼%, not packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Norfolk Japanese plywood
R74/352	Re, J. October 3, 1974	United States Plywood Corp.	R59/7272, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R74/353	Re, J. October 9, 1974	Castelazo & Associates et al.	R58/2337, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/354	Re, J. October 9, 1974	N. D. Cunningham & Co., Inc.	R61/16109	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Mobile Japanese plywood
R74/355	Re, J. October 9, 1974	U.S. Plywood Corporation	R61/18173, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Portland, Oreg. Japanese plywood
R74/356	Re, J. October 17, 1974	The Beton Co., Inc., et al.	R58/1237, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/357	Re, J. October 24, 1974	Aircargo Brokerage Co., et al.	R58/24561, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Miami Japanese plywood
R74/358	Re, J. October 24, 1974	D. C. Andrews & Co. of Mass. et al.	R59/1457, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Boston Japanese plywood
R74/359	Re, J. October 24, 1974	Biddle Purchasing Co.	R61/7408	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Baltimore Japanese plywood

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R74/360	Re, J. October 24, 1974	Geo. S. Bush & Co., Inc., et al.	R58/20955, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R74/361	Re, J. October 24, 1974	Geo. S. Bush & Co. Inc.	R59/7986	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Portland, Oreg. Japanese plywood
R74/362	Re, J. October 24, 1974	Cavalier Shipping Co., Inc., et al.	R58/15401, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S . v . Getz Bros. & Co. et al. (C.A.D. 927)	Norfolk Japanese plywood
R74/363	Re, J. October 24, 1974	M. S. Cowen Co. et al.	R60/6375, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Tampa Japanese plywood, other than birch plywood
R74/364	Re, J. October 24, 1974	Getz Bros. & Co. et al.	279538–A, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New York Japanese plywood
R74/365	Re, J. October 24, 1974	Heide & Co., Inc., et al.	R64/17750, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Wilmington, N.C. Japanese plywood
R74/366	Re, J. October 29, 1974	Castelazo & Associates et al.	R58/1235, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood

R74/367	Re, J. October 29, 1974	J. Cortina et al.	R61/10099, etc.	Export value: Net appraised value less 7½%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Tampa Japanese plywood
R74/368	Re, J. October 29, 1974	Getz Bros. & Co. et al.	R65/7918, etc.	Export value: Net appraised value less 7½%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/369	Re, J. October 29, 1974	Toyomenka, Inc., et al.	R59/2804, etc.	Export value: Net appraised value less 7½%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/370	Boe, C. J. November 7, 1974	Mitsui & Co. (U.S.A.), Inc.	72-7-01633	American selling price	$16.50 per kg., net packed	Judgment on the pleadings	Savannah DL alpha tocopheryl acetate of 88% purity
R74/371	Boe, C. J. November 7, 1974	Naftone, Inc.	R69/3306	American selling price	$7.50 per lb.	Agreed statement of facts	New York "Mondur HX" pure
R74/372	Boe, C. J. November 7, 1974	RCA Corporation	72-7-01567	Constructed value	Radios: $10.3804 each, net packed Earphones: $0.07 each, net packed Batteries: $0.02 each, net packed	Judgment on the pleadings	Los Angeles Radios imported together with earphones and batteries
R74/373	Watson, J. November 7, 1974	Mitsui & Co. (USA), Inc.	R70/5140	Export value: Appraised unit price (not including any addition to such price for buying commission), net packed	Not stated	Mitsui & Co. (U.S.A.), Inc. v. U.S. (R.D. 11740)	Mobile Water jet looms and spare or auxiliary parts

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R74/374	Watson, J. November 7, 1974	Mitsui & Co. (U.S.A.), Inc.	R70/7272, etc.	Export value: Appraised unit price (not including any addition to such price for buying commission), net packed	Not stated	Mitsui & Co. (U.S.A.), Inc. v. U.S. (R.D. 11740)	New York Water jet looms and spare or auxiliary parts, or parts separately
R74/375	Re, J. November 7, 1974	Marubeni-Iida (America), Inc.	R68/15715, etc.	Export value: Invoice unit price, net packed less ocean freight and marine insurance	Not stated	Agreed statement of facts	Los Angeles Milling machines
R74/376	Re, J. November 14, 1974	RCA Corporation	72-7-01536, etc.	Constructed value (merchandise set forth on schedule A, attached to decision and judgment)	Set forth in said schedule A (Earphones covered by entries listed on schedule B, attached to decision and judgment, assessed at 10% and 9% under item 684.70 dutiable at 8.5% or 7% under item 685.25)	Agreed statement of facts	Los Angeles Radio chassis, transistor radio sets, and radios (with or without accessories) (merchandise set forth on said schedule A); earphones (not "headphones") of a type chiefly used with radios (merchandise subject of entries listed on said schedule B)

R74/377	Watson, J. November 20, 1974	A & A Trading Corp.	72-2 00311, etc.	Export value: Appraised values less the amounts described as the "commission"	Not stated	A & A Trading Corp. v. U.S. (C.D. 4472)	Seattle Articles imported under subject entries, appraised at values including an amount for commission
R74/378	Re, J. November 20, 1974	Balfour, Guthrie & Co., Ltd., et al.	R59/1174, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R74/379	Re, J. November 20, 1974	Borneo Sumatra Trading Co. et al.	288814-A, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R74/380	Re, J. November 20, 1974	Borneo Sumatra Trading New York	R59/3347, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/381	Re, J. November 20, 1974	Arthur J. Fritz & Co. et al.	R58/19717, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R74/382	Re, J. November 20, 1974	Getz Bros. Co., Inc., et al.	287751-A, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New Orleans Japanese plywood
R74/383	Re, J. November 20, 1974	B. A. McKenzie & Co., Inc., et al.	R58/21829, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Tacoma (Seattle) Japanese plywood
R74/384	Re, J. November 21, 1974	Boutique Wigs, Inc., of Texas	71-8-00952	Export value: Invoiced unit values, net packed	Not stated	Judgment on the pleadings	Houston Wigs, hairpieces, etc.

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R74/385	Re, J. November 26, 1974	Balfour, Guthrie & Co., Ltd., et al.	R59/6700, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros., & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R74/386	Re, J. November 26, 1974	Building Products Co.	R58/12783	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Houston Japanese plywood
R74/387	Re, J. November 26, 1974	Geo. S. Bush & Co., Inc., et al.	R58/20963, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Portland, Oreg. Japanese plywood
R74/388	Re, J. November 26, 1974	Geo. S. Bush & Co., Inc., et al.	R59/16766, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R74/389	Re, J. November 26, 1974	Page & Jones, Inc.	R61/16040	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Mobile Japanese plywood
R74/390	Re, J. November 26, 1974	Pan Pacific Overseas Corp.	R59/5574	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New Orleans Japanese plywood
R74/391	Re, J. November 26, 1974	Pan Pacific Overseas Corp.	R60/15642	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Tampa Japanese plywood
R74/392	Re, J. November 26, 1974	Wood Mosaic Industries, Inc.	R59/6440	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood

R74/393	Re, J. November 27, 1974	Borneo Sumatra Trading Co.	R61/13664, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New York Japanese plywood
R74/394	Re, J. November 27, 1974	Castelazo & Associates et al.	R60/13160, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/395	Re, J. November 27, 1974	Fidelity Trading Co., Inc.	R60/16765, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R74/396	Re, J. November 27, 1974	William H. Masson, Inc., et al.	R59/17694, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Baltimore Japanese plywood
R74/397	Re, J. November 27, 1974	Mattoon & Co., Inc.	R60/16767, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R74/398	Re, J. November 27, 1974	B. A. McKenzie & Co., Inc.	R58/11631	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Tacoma (Seattle) Japanese plywood
R74/399	Re, J. November 27, 1974	Pan Pacific Overseas Corp.	R60/17724	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Miami Japanese plywood
R74/400	Re, J. November 27, 1974	Wood Mosaic Industries, Inc.	R59/6528	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Portland, Oreg. Japanese plywood
R74/401	Re, J. December 4, 1974	B. A. McKenzie & Co., Inc., et al.	R58/28194, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Tacoma (Seattle) Japanese plywood

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R74/402	Watson, J. December 9, 1974	A & A Trading Corp.	R69/10591, etc.	Export value: Appraised values less amounts described as the "commission"	Not stated	A & A Trading Corp. v. U.S. (C.D. 4472)	Seattle All merchandise imported under subject entries
R74/403	Watson, J. December 9, 1974	A & A Trading Corp.	R70/1184, etc.	Export value: Appraised values less amounts described as the "commission"	Not stated	A & A Trading Corp. v. U.S. (C.D. 4472)	Fort Worth All merchandise imported under subject entries
R74/404	Watson, J. December 9, 1974	A & A Trading Corp.	R70/9565, etc.	Export value: Appraised values less amounts described as the "commission"	Not stated	A & A Trading Corp. v. U.S. (C.D. 4472)	Seattle All merchandise imported under subject entries
R74/405	Watson, J. December 9, 1974	A & A Trading Corp.	R70/9593, etc.	Export value: Appraised values less amounts described as the "commission"	Not stated	A & A Trading Corp. v. U.S. (.CD. 4472)	Seattle All merchandise imported under subject entries
R74/406	Watson, J. December 9, 1974	A & A Trading Corp.	R70/9610, etc.	Export value: Appraised values less amounts described as the "commission"	Not stated	A & A Trading Corp. v. U.S. (C.D. 4472)	Seattle All merchandise imported under subject entries
R74/407	Watson, J. December 9, 1974	Brown, Alcantar & Brown, Inc. a/c RCA Record Division	72-2-00355, etc.	Constructed value	As set forth in schedule C attached to decision and judgment	Brown, Alcantar & Brown, Inc., et al. v. U.S. (A.R.D. 306)	El Paso Phonograph records

R74/408	Watson, J. December 9, 1974	Brown, Alcantar & Brown, Inc., a/c RCA Record Division	72–6–01390, etc.	Constructed value	As set forth in schedule C attached to decision and judgment	Brown, Alcantar & Brown, Inc., et al. v. U.S. (A.R.D. 306)	El Paso Phonograph records
R74/409	Watson, J. December 9, 1974	Radio Corp. of America et al.	R68/6450, etc.	Constructed value	As set forth in schedule C attached to decision and judgment	Brown, Alcantar & Brown, Inc., et al. v. U.S. (A.R.D. 306)	Los Angeles Phonograph records
R74/410	Re, J. December 11, 1974	Balfour, Guthrie & Co., Ltd., et al.	R65/11664, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R74/411	Re, J. December 11, 1974	Biddle Purchasing Co.	R60/8503, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Tampa Japanese plywood
R74/412	Re, J. December 11, 1974	Borneo Sumatra of Calif. et al.	297160–A, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/413	Re, J. December 11, 1974	Borneo Sumatra Trading Co., inc.	R60/6281, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Wilmington, N.C. Japanese plywood
R74/414	Re, J. December 11, 1974	Borneo Sumatra Trading Co.	R64/14562	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Houston Japanese plywood
R74/415	Re, J. December 11, 1974	J. Gerber & Co., Inc.	R58/15453	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Philadelphia Japanese plywood

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DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R74/416	Re, J. December 11, 1974	Wood Mosaic Industries, Inc.	R64/13536	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R74/417	Re, J. December 12, 1974	A & A Trading Corp.	R70/3283, etc.	Constructed value	Are those listed on schedule attached to decision and judgment in column designated "Claimed Values" for each article, net packed	Agreed statement of facts	Fort Worth Radios imported with earphone and/or batteries
R74/418	Re, J. December 12, 1974	Consolidated Sewing Machine Corp. et al.	71-12-02008, etc.	Constructed value	As set forth in schedule attached to decision and judgment	Agreed statement of facts	Los Angeles Solid-state (tubeless) radio receivers, or combination articles containing such receivers, together with batteries, and/or earphones, and/or other accessories
R74/419	Watson, J. December 17, 1974	J. M. Rodgers Co., Inc.	R61/3498, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Each)"	Agreed statement of facts	New York Various articles of footwear

R74/420	Watson, J. December 17, 1974	J. M. Rodgers Co., Inc.	R61/3785, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Each)"	Agreed statement of facts	New York Various articles of footwear
R74/421	Maletz, J. December 19, 1974	Majestic Electronics, Inc.	R65/20536	Export value: Invoiced and entered values	Not stated	Majestic Electronics, Inc. v. U.S. (R.D. 11686)	Los Angeles Ladies' wigs and ladies' wiglet ponytails
R74/422	Newman, J. December 19, 1974	Mitsui & Co., Ltd.	R69/1598, etc.	United States value	Equal to Mitsui Seiki FOB Japan unit values (said values being attached to order as "Appendix B") multiplied by the "appropriate factors" as set forth in finding of fact No. 5 of said order, less 20% commission, less 4.66% of Mitsui Seiki FOB unit value, less included duty, packed	Judgment on the pleadings	New York; Los Angeles Mitsui Seiki optical jig boring machines and accessories
R74/423	Boe, C.J. December 30, 1974	Millmaster International, Inc., et al.	R59/6524, etc.	United States value	As set forth in schedule "B" attached to decision and judgment	Millmaster International, Inc., et al. v. U.S. (C.A.D. 987)	San Francisco Thiourea
R74/424	Ford, J. December 31, 1974	Park Avenue Imports	R64/17982	Export value: In each case the entered f.o.b. price, including 6% handling charge	Not stated	Park Avenue Imports v. U.S. (A.R.D. 255)	Chicago Men's cotton raincoats, boys' pants and rayon gabardine pants (wearing apparel)

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R74/425	Watson, J. December 31, 1974	Mitsui & Co. (U.S.A.), Inc.	R69/1596, etc.	United States value	Equal to Mitsui Seiki FOB Japan unit values (said values being attached to order as "Appendix B" for shipments prior to August 1, 1968; "Appendix C" for shipments during period August 1, 1968 through May 31, 1969; "Appendix D" for shipments after May 31, 1969) multiplied by the "appropriate factors" as set forth in finding of fact No. 5 of said order, less commission (20% to April 1, 1967 and 22% thereafter), less 4.66% of Mitsui Seiki FOB unit value, less included duty, packed	Judgment on the pleadings	New York; Houston; Los Angeles; San Francisco Mitsui Seiki optical jig boring machines and accessories

ABSTRACTS OF CUSTOMS COURT DECISIONS

Valuation Decisions on Remand

from Protest Proceedings

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	PROTEST NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
V74/1	Landis, J. July 16, 1974	F. Chu & Co.	62/18342 (C.D. 4018)	Export value	Unit prices set forth in schedule A attached to decision and judgment for the repacked merchandise	Agreed statement of facts	San Francisco Silk wearing apparel entered at New York (WH entry No. 31840) and transferred to San Francisco (rewarehouse entry No. 3047)

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	PROTEST NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
V74/2	Newman, J. August 20, 1974	The Garcia Corp.	60/10137 (C.D. 3753)	Export value	Entry No. 90229 Fishing line within each of 5000 fishing line cases: $0.496; total value $2480 Each fishing line case: $0.14; total value of 5000 fishing line cases $700 Entry No. 80970 Fishing line cases: Value as entered on reconstructed customs form 7502 Fishing line: Entered value, as shown on reconstructed customs form 7502, less included value of fishing line cases	Agreed statement of facts	New York Nylon fishing line in cases, appraised and liquidated as entireties (at 27½% under par. 1211/1559), with separate duty on cases (19% under par. 397/1559; sec. 504); separate articles of commerce subject to separate assessments

RULES OF THE UNITED STATES CUSTOMS COURT

Effective December 30, 1974, the Court amended Rule 16.1(a) by deleting the words "who is a citizen of the United States or of any territory or possession thereof and." The rule now reads as follows:

(a) On Motion or by Application: Any person of good moral character who has been admitted to practice in the Superme Court of the United States or the highest court of any state, territory, possession, or the District of Columbia, or the United States Court of Customs and Patent Appeals, and is in good standing therein, may be admitted to practice as an attorney in this court by either of the following methods:

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